TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~210.~~ 30

THE DELAWARE RAILROAD CONSTRUCTION COMPANY, APPELLANT,

vs.

LEWIS H. MEYER AND WILLIAM DENNISON, TRUSTEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 10, 1876.

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No. 210.

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LEWIS H. MEYER AND WILLIAM DENNISON, TRUSTEES.

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1, 2 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room, in the city of Des Moines and district aforesaid, on the second Monday of May, the same being the eighth day of May, A. D. 1876, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for said district of Iowa.

3 Be it remembered that heretofore, to wit, on the ninth day of October, 1875, W'm Dennison and Lewis H. Meyer, trustees, by Mess. Grant & Smith, their att'ys, filed in the clerk's office of the circuit court of the United States for the district of Iowa, a transcript of record from the circuit court of Delaware County, State of Iowa, wherein the Delaware Railroad Construction Company was complainant and the Davenport and S't Paul Railroad Company et al. were defendants; which said transcript is in the words and figures following, to wit:

4 STATE OF IOWA,
Delaware County, ss:

Pleas before the circuit court of the State of Iowa for the county of Delaware, at a term begun and holden in the county of Delaware on the fourth Monday in January, 1874, on the third Monday in May, 1874, on the fourth Monday in January, 1875, and on the third Monday in May, 1875, before the Hon. Sylvester Bagg, sole judge of the circuit court in and for the ninth judicial district of the State of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company *against* THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.	1141.	Equity.

5 Be it remembered, that heretofore, to wit, on the 15th day of January, A. D. 1874, a petition was filed in the office of the clerk of the circuit court, in and for the county of Delaware and State of Iowa, in words and figures following, to wit:

Petition in equity.

In the circuit court of Delaware County, Ohio.

THE DELAWARE RAILROAD CONSTRUCTION Company *vs.* THE DAVENPORT AND ST. PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

Par. 1. The Delaware Railroad Construction Company, the plaintiff in this suit, is a corporation duly organized under the laws of the

6 State of Iowa, and alleges that heretofore, to wit, on or about the sixth day of August, A. D. 1870, said plaintiff entered into a written contract, a copy of which is hereto annexed and made a part hereof, whereby said plaintiff agreed with the defendant, the Davenport and St. Paul Railroad Company, a corporation duly organized under the laws of the State of Iowa, for the performance of certain work, and the furnishing of certain materials for said railroad, which will more particularly appear from a copy of said contract contained in the statement for a mechanics' lien, filed by said plaintiff in the office of the clerk of the district court of Delaware County, Iowa, and a copy of said statement, including a copy of said contract, is hereto annexed and made a part of this petition. By said contract said plaintiff agreed to grade said road from the south line to the north line of Delaware County; to do the grubbing, side-chopping, and clearing men-
7 tioned in said contract; to excavate the earth, solid and loose rock required for said portion of said road; and to furnish the timber and plank for bridges, the piles for foundations and bridges, and ties for said portion of said road.

Par. 2. Plaintiff alleges that under the direction and supervision of the engineer of said railroad company said plaintiff performed the work required in said contract, and in every respect complied with the terms and conditions thereof.

Par. 3. That the plaintiff, under said contract and the direction and supervision of said engineer, on the 29th day of September, A. D. 1870, commenced said work, and from that date to Nov. 15, 1870, excavated eighteen hundred and five yards of earth, and furnished and put twenty-two hundred and fifty-two feet of plank into culverts. That the same was estimated by said engineer Nov. 15, 1870, as will more fully appear from his estimate No. 1, a copy of which is hereto annexed and made a part hereof.

8 Par. 4. That plaintiff in like manner, from Nov. 15 to Dec. 15, 1870, excavated twenty thousand and ninety-one yards of earth, one hundred and twenty-three yards of solid rock, and nine hundred yards of loose rock; furnished and put into culverts twelve hundred and sixty-two feet of lumber, and grubbed and cleared four and fifty-eight hundredths acres of land, as will also appear from the estimate of said engineer, made Dec. 15, 1870; a copy of which is marked "Estimate No. 2," is hereto annexed, and made a part of this petition.

Par. 5. That in like manner said plaintiff, previous to Jan. 10th, 1871, and from Dec. 15, 1870, excavated eighteen thousand and one hundred and four yards of earth, four hundred and twelve yards of solid rock, and two hundred thirty-nine yards of loose rock; furnished and put into culverts one thousand five hundred and thirty-six feet of
9 lumber, and grubbed and cleared thirty-four hundredths of an acre of land, and furnished one thousand and four ties, as will appear from the estimate of said engineer, made January 20, 1871, of which a copy, marked "Estimate No. 3," is annexed hereto and made a part hereof.

Par. 6. That in like manner, from January 10th, 1871, to February 1st, 1871, plaintiff excavated twenty-four hundred and forty-five yards of earth, seven hundred and thirty-eight yards of solid rock, and seven hundred and seventy yards of loose rock; furnished and put into culverts four hundred and sixty-four feet of lumber, grubbed and cleared one acre of land, and furnished twenty-three hundred and seventy-eight ties, all of which were included in the estimate of said engineer, made

Feb. 1st, 1871, a copy of which is hereto annexed, marked "No. 4," and made a part hereof.

Par. 7. That in like manner from Feb. 1st to March 1st, 1871,
10 plaintiff furnished thirty seven hundred and twenty-eight ties, as shown by the Estimate No. 5, a copy of which is hereto annexed and made a part of this petition.

Par. 8. That in like manner, from March 1st, 1871, to April 1st, 1871, plaintiff excavated ten thousand five hundred and fifty yards of earth, twelve hundred and seventy-four yards of solid rock, and three thousand eight hundred and fifty-nine yards of loose rock; furnished eleven thousand six hundred and eighty-six ties, and grubbed and cleared one acre of land, all of which appears from the estimate of said engineer, marked "No. 6"; a copy of which is hereto annexed and made a part hereof.

Par. 9. That in like manner, from April 1st to May 1st, A. D. 1871, plaintiff excavated twenty-four thousand six hundred and eighty-four yards of earth, thirteen hundred and ninety-two yards of solid
11 rock, and nineteen hundred and six yards of loose rock; furnished and put in twenty-seven hundred feet of lumber for culverts, furnished and delivered sixteen hundred and five ties, two thousand and ninety-five feet of piling, and grubbed and cleared five and thirty-five hundredths acres of land, being the estimate of said engineer, of which a copy, marked "No. 7," is hereto annexed and made a part hereof.

Par. 10. That in like manner from May 1st to June 1st, 1871, plaintiff excavated thirty-three thousand and fifty-three yards of earth, eight hundred and fifty-three yards of solid rock, and two thousand three hundred and ninety-eight yards of loose rock, furnished and put in thirty-six hundred and fifty-six feet of lumber, furnished and delivered fifteen hundred and forty-two ties, two thousand and ninety-six feet of piles, and grubbed and cleared one and $\frac{5}{10}$ acres of land, which is shown by estimate No. 8 of said engineer, of which a copy is hereto annexed and made a part of this petition.

12 Par. 11. That in like manner from June 1st to July 10, 1871, plaintiff excavated twenty-eight thousand three hundred and twenty-five yards of earth, eleven hundred and forty-nine yards of solid rock, and thirteen hundred and forty-seven yards of loose rock, furnished and put into culverts three thousand three hundred and forty-one feet of lumber, furnished and delivered two thousand and sixty-six ties, nine hundred and fourteen feet of piling, and grubbed and cleared four acres of land; all of which is shown by estimate No. 9, a copy of which is hereunto annexed and made a part of this petition.

Par. 12. That in like manner from July 10 to Aug. 7, 1871, plaintiff excavated ten thousand eight hundred and seventy-nine yards of earth, two hundred and sixty-four yards of solid rock, and fifty yards of loose rock, furnished and put into culverts twenty-four hundred and
13 thirty-six feet of lumber, furnished and delivered fifty ties, and grubbed and cleared six and ninety-seven hundredths acres of land; all of which was duly estimated by said engineer, a copy of whose estimate, marked No. 10, is hereto annexed, and made a part hereof.

Par. 13. That in like manner from August 7th to September 9th, 1871, plaintiff excavated twenty-eight thousand nine hundred and fifty-seven yards of earth, three hundred and fifty-one yards of solid rock, and six hundred and eighty-five yards of loose rock, furnished twenty-three hundred and ninety-two feet of lumber, putting it into culverts, furnished one hundred and fifty-seven ties, grubbed and cleared one and one-half acres of land, furnished and drove seven hundred and eighty

6 State of Iowa, and alleges that heretofore, to wit, on or about the sixth day of August, A. D. 1870, said plaintiff entered into a written contract, a copy of which is hereto annexed and made a part hereof, whereby said plaintiff agreed with the defendant, the Davenport and St. Paul Railroad Company, a corporation duly organized under the laws of the State of Iowa, for the performance of certain work, and the furnishing of certain materials for said railroad, which will more particularly appear from a copy of said contract contained in the statement for a mechanics' lien, filed by said plaintiff in the office of the clerk of the district court of Delaware County, Iowa, and a copy of said statement, including a copy of said contract, is hereto annexed and made a part of this petition. By said contract said plaintiff agreed to grade said road from the south line to the north line of Delaware County; to do the grubbing, side-chopping, and clearing men-
7 tioned in said contract; to excavate the earth, solid and loose rock required for said portion of said road; and to furnish the timber and plank for bridges, the piles for foundations and bridges, and ties for said portion of said road.

Par. 2. Plaintiff alleges that under the direction and supervision of the engineer of said railroad company said plaintiff performed the work required in said contract, and in every respect complied with the terms and conditions thereof.

Par. 3. That the plaintiff, under said contract and the direction and supervision of said engineer, on the 29th day of September, A. D. 1870, commenced said work, and from that date to Nov. 15, 1870, excavated eighteen hundred and five yards of earth, and furnished and put twenty-two hundred and fifty-two feet of plank into culverts. That the same was estimated by said engineer Nov. 15, 1870, as will more fully appear from his estimate No. 1, a copy of which is hereto annexed and made a part hereof.

8 Par. 4. That plaintiff in like manner, from Nov. 15 to Dec. 15, 1870, excavated twenty thousand and ninety-one yards of earth, one hundred and twenty-three yards of solid rock, and nine hundred yards of loose rock; furnished and put into culverts twelve hundred and sixty-two feet of lumber, and grubbed and cleared four and fifty-eight hundredths acres of land, as will also appear from the estimate of said engineer, made Dec. 15, 1870; a copy of which is marked "Estimate No. 2," is hereto annexed, and made a part of this petition.

Par. 5. That in like manner said plaintiff, previous to Jan. 10th, 1871, and from Dec. 15, 1870, excavated eighteen thousand and one hundred and four yards of earth, four hundred and twelve yards of solid rock, and two hundred thirty-nine yards of loose rock; furnished and put into culverts one thousand five hundred and thirty-six feet of
9 lumber, and grubbed and cleared thirty-four hundredths of an acre of land, and furnished one thousand and four ties, as will appear from the estimate of said engineer, made January 20, 1871, of which a copy, marked "Estimate No. 3," is annexed hereto and made a part hereof.

Par. 6. That in like manner, from January 10th, 1871, to February 1st, 1871, plaintiff excavated twenty-four hundred and forty-five yards of earth, seven hundred and thirty-eight yards of solid rock, and seven hundred and seventy yards of loose rock; furnished and put into culverts four hundred and sixty-four feet of lumber, grubbed and cleared one acre of land, and furnished twenty-three hundred and seventy-eight ties, all of which were included in the estimate of said engineer, made

Feb. 1st, 1871, a copy of which is hereto annexed, marked "No. 4," and made a part hereof.

Par. 7. That in like manner from Feb. 1st to March 1st, 1871,
10 plaintiff furnished thirty seven hundred and twenty-eight ties, as shown by the Estimate No. 5, a copy of which is hereto annexed and made a part of this petition.

Par. 8. That in like manner, from March 1st, 1871, to April 1st, 1871, plaintiff excavated ten thousand five hundred and fifty yards of earth, twelve hundred and seventy-four yards of solid rock, and three thousand eight hundred and fifty-nine yards of loose rock; furnished eleven thousand six hundred and eighty-six ties, and grubbed and cleared one acre of land, all of which appears from the estimate of said engineer, marked "No. 6"; a copy of which is hereto annexed and made a part hereof.

Par. 9. That in like manner, from April 1st to May 1st, A. D. 1871, plaintiff excavated twenty-four thousand six hundred and eighty-four yards of earth, thirteen hundred and ninety-two yards of solid
11 rock, and nineteen hundred and six yards of loose rock; furnished and put in twenty-seven hundred feet of lumber for culverts, furnished and delivered sixteen hundred and five ties, two thousand and ninety-five feet of piling, and grubbed and cleared five and thirty-five hundredths acres of land, being the estimate of said engineer, of which a copy, marked "No. 7," is hereto annexed and made a part hereof.

Par. 10. That in like manner from May 1st to June 1st, 1871, plaintiff excavated thirty-three thousand and fifty-three yards of earth, eight hundred and fifty-three yards of solid rock, and two thousand three hundred and ninety-eight yards of loose rock, furnished and put in thirty-six hundred and fifty-six feet of lumber, furnished and delivered fifteen hundred and forty-two ties, two thousand and ninety-six feet of piles, and grubbed and cleared one and $\frac{5}{10}$ acres of land, which is shown by estimate No. 8 of said engineer, of which a copy is hereto annexed and made a part of this petition.

12 Par. 11. That in like manner from June 1st to July 10, 1871, plaintiff excavated twenty-eight thousand three hundred and twenty-five yards of earth, eleven hundred and forty-nine yards of solid rock, and thirteen hundred and forty-seven yards of loose rock, furnished and put into culverts three thousand three hundred and forty-one feet of lumber, furnished and delivered two thousand and sixty-six ties, nine hundred and fourteen feet of piling, and grubbed and cleared four acres of land; all of which is shown by estimate No. 9, a copy of which is hereunto annexed and made a part of this petition.

Par. 12. That in like manner from July 10 to Aug. 7, 1871, plaintiff excavated ten thousand eight hundred and seventy-nine yards of earth, two hundred and sixty-four yards of solid rock, and fifty yards of loose rock, furnished and put into culverts twenty-four hundred and
13 thirty-six feet of lumber, furnished and delivered fifty ties, and grubbed and cleared six and ninety-seven hundredths acres of land; all of which was duly estimated by said engineer, a copy of whose estimate, marked No. 10, is hereto annexed, and made a part hereof.

Par. 13. That in like manner from August 7th to September 9th, 1871, plaintiff excavated twenty-eight thousand nine hundred and fifty-seven yards of earth, three hundred and fifty-one yards of solid rock, and six hundred and eighty-five yards of loose rock, furnished twenty-three hundred and ninety-two feet of lumber, putting it into culverts, furnished one hundred and fifty-seven ties, grubbed and cleared one and one-half acres of land, furnished and drove seven hundred and eighty

feet of piling, not over twenty feet, and five hundred feet of piling over twenty feet long, and thirty-five hundred feet of piling, each pile being over twenty feet, and furnished and put into bridges twenty-four
14 thousand five hundred and seventy-two feet of lumber; all estimated by said engineer, as will appear from his estimate No. 11, hereto annexed and made a part hereof.

Par. 14. That in like manner from September 9th to October 4th, 1871, plaintiff excavat*ive* twenty-six thousand five hundred and fifty-four yards of earth, seven hundred and seventy-five yards of solid rock, five hundred and nine yards of loose rock, furnished and put into bridges and culverts twenty-two thousand two hundred and ninety-six feet of lumber, furnished and delivered one hundred and three ties, grubbed and cleared two and forty-five hundredths acres of land, put in fifteen yards of riprap, at the rate of fifty cents per yard, and the same was reasonably worth $7.50, and furnished and drove three hundred feet of piling, each pile not over twenty feet long; all of which is included
15 in the estimate of said engineer marked No. 12, of which a copy is hereto annexed and made a part of this petition.

Par. 15. That in like manner from October 4th to November 4th, 1871, plaintiff excavated eighteen thousand seven hundred and thirty-three yards of earth, five hundred and sixty-three yards of solid rock, and two hundred and twenty-nine yards of loose rock, furnished and put into culverts seventeen hundred and eighty feet of lumber, grubbed and cleared one and one-fourth acres of land, furnished and drove eighty feet of piling, each pile not over twenty feet long, and thirty-two hundred and thirty-two feet of piling, each pile being over twenty feet long, and furnished and put into bridges seventy-four thousand five hundred and eighty-three feet of lumber; all of which, estimated by said engineer, is shown by his estimate No. 13, of which a copy is hereto annexed and made a part of this petition.

16 Par. 16. That in like manner from Nov. 4th to Dec. 15, 1871, plaintiff excavated eleven thousand seven hundred and eighty-seven yards earth, fifty yards of solid rock and eighty-eight yards of loose rock, furnished and put into culverts fifteen hundred feet of lumber, grubbed and cleared one and seventy-five hundredths acres of land, furnished and drove nine hundred and thirty feet of piles, each over twenty feet long, and furnished for bridges sixteen thousand two hundred and eighty-seven feet of lumber; all estimated by said engineer Dec. 15th, 1871, as will appear from his estimate No. 14, of which a copy is hereto annexed and made a part of this petition.

No. 17. That in like manner from the 15th day of December, 1871, to April 1st, 1872, plaintiff excavated six thousand and eleven yards of earth, two hundred and ninety yards of solid rock, and two hun-
17 dred and fifty yards of loose rock, furnished and delivered eighty thousand feet of bridging, twelve thousand three hundred and fifty-nine ties, sixteen hundred and thirty feet of piling, and furnished and drove twenty-one hundred feet of piling, each pile being over twenty feet in length; all estimated by said engineer in his estimate*d* No. 15, of which a copy is hereto annexed and made a part of this petition.

Par. 18. That in like manner plaintiff from April 1st, 1872, to May 1st, 1872, *plaintiff* excavated twenty-five thousand four hundred and fifty-seven yards of earth, seven hundred yards of solid rock, and twenty-eight hundred yards of loose rock, furnished and put into culverts twenty-six hundred and twenty-four feet of lumber, furnished and drove seven hundred feet of piling, furnished and delivered three thousand one hundred and thirty-eight ties, and grubbed and cleared four acres

of land; all of which was duly estimated May 1st, 1872, as will appear from estimate No. 16, of which a copy is hereto annexed and made a part of this petition.

Par. 19. That in like manner during the month of May, 1872, plaintiff excavated eighty-two thousand two hundred and twenty-nine yards of earth, nine hundred and eighty-three yards of solid rock, and twenty-one hundred and ninety-three yards of loose rock, furnished and put into culverts eighty-seven hundred and eighty feet of lumber, and furnished and delivered six thousand three hundred and twenty-eight ties; all of which were estimated by said engineer in estimate No. 17, of which a copy is hereto annexed and made a part of this petition.

Par. 20. That in like manner from the month of May to July 1st, 1872, plaintiff excavated thirty-four thousand one hundred and forty-three yards of earth, seven hundred and fifty-eight yards of solid rock, and eight hundred and seventy-eight yards of loose rock, furnished fifty-nine hundred and thirty-nine ties, furnished and drove 1,260 feet of piling, each pile being not over twenty feet, thirteen hundred and seventy-eight feet of piling, each pile being over twenty feet in length, and furnished and put into bridges eighty-one thousand three hundred and fifty-six feet of lumber; all of which was duly estimated by said engineer July 1st, as shown by his estimate No. 18, of which a copy is hereunto annexed and made a part of this petition.

Par. 21. That in like manner, after the 28th day of December, 1872, when said engineer made his final estimate, of which a copy marked "No. 19" is hereto annexed and made a part of this petition, and after the entire line had been completed and accepted by said railroad company, other work was done by plaintiff and other materials furnished for said railroad company at its special instance and request, to wit, fifteen thousand five hundred and fifty-one feet of lumber, reasonably worth the sum of $15.50 per thousand, said lumber being required and ordered by said railroad company, and furnished by plaintiff through Boon and Martin, subcontractors, having a contract with the plaintiff to furnish the same, and the same was allowed, estimated, and approved by said engineer, as shown by supplimental estimate marked "No. 20," a copy of which is hereunto annexed and made a part hereof; also one hundred and fifty-two ties, reasonably worth fifty-five cents each, and two hundred and thirty-five feet of lumber put into culverts, reasonably worth the sum of $35 per thousand, and of earth plaintiff excavated one thousand and eighty yards, reasonably worth the sum of twenty cents per yard; which was also allowed, estimated, and approved by said engineer, as appears by a supplimental estimate marked "21," of which a copy is hereto annexed and made a part of this petition.

Par. 22. That in like manner, previous to the 28th day of December, 1872, in addition to the work and materials mentioned in all of said estimates, except that marked No. 19, called the final estimate, plaintiff excavated eighty-six thousand and fifty-one yards of earth, seventeen hundred and fifty yards of solid rock, and thirty-two hundred and nine yards of loose rock, furnished and put into bridges and culverts one hundred and forty-two thousand three hundred and ninety-eight feet of lumber, furnished eleven thousand three hundred and seventy-eight ties and seventy yards of riprap work, said seventy yards being reasonably worth $80.50, and grubbed and cleared nine and ninety-four one-hundredths acres of land; all of which was ordered, allowed, and estimated by said engineer, being included in esti

mate No. 19, of which a copy is hereunto annexed and made a part of this petition, being called by said engineer final estimate.

Par. 23. And plaintiff says that a disagreement arose betweeen the plaintiff and defendant in relation to the construction of said contract, which was arranged and settled by a subsequent agreement to strike out the following words above the signature of H. Price, to wit: "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County;" said agreement to strike out being evidenced by the resolutions and proceedings of the board of directors of said railroad company, of which a copy is hereunto annexed and made a part of this petition, and by the proceedings and resolutions of the board of directors of plaintiff, a copy of which is hereunto annexed, marked "C," and
23 made a part of this petition.

Par. 24. And plaintiff says that from the commencement of said work to the present time the entire amount received upon said contract in payment thereof is only the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents; that said amount is comprised in the following payments made at the times below-stated, and applied as below stated, to wit, the following amounts were received at the times stated opposite the various sums and applied upon said contract in payment of the amount due as eighty per cent of estimate No. 1 of said engineer:

Amount received Nov. 21, 1870	$919 88
Amount received Nov. 24, 1870	50 00
Amount received Jan. 6, 1871	59 41

The following sums, received on or about the dates opposite the amounts, were applied in payment of the amount due as eighty per cent. of estimate No. 2 of said engineer:

24 Amount received Dec. 19, 1870	$25 00
Amount received Dec. 21, 1870	700 00
Amount received Dec. 23, 1870	520 65
Amount received Dec. 24, 1870	446 01
Amount received Dec. 28, 1870	$820 00
Amount received Dec. 29, 1870	1,186 04
Amount received Dec. 30, 1870	55 00
Amount received Dec. 31, 1870	110 00
Amount received Jan. 6, 1871	33 39

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estitimate No. 3. of said engineer:

Am't received Jan. 17, 1871	$160 21
Am't received Jan. 19, 1871	136 67
Am't received Jan. 20, 1871	224 82
Am't received Jan. 21, 1871	97 92
Am't received Jan. 23, 1871	590 34
Am't received Jan. 28, 1871	320 77
Am't received Feb. 15, 1871	243 62
Am't received Feb. 16, 1871	13 53
Am't received Feb. 24, 1871	420 16

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate No. 4 of said engineer:

Am't received Feb. 4, 1871	$1,355 20
Am't received Feb. 9, 1871	277 71
Am't received Feb. 11, 1871	443 49
Am't received Feb. 14, 1871	38 80
Am't received Feb. 15, 1871	237 73

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 5:"

Am't received March 8, 1871	$240 00
Am't received March 10, 1871	70 00
Am't received March 14, 1871	78 75
Am't received March 15, 1871	100 00
Am't reeeived March 24, 1871	364 83
Am't received March 25, 1871	30 00
Am't received March 27, 1871	65 65

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due, as 80 per cent. of estimate of said engineer marked "No. 6:"

Am't received April 6, 1871	$151 14
Am't received April 8, 1871	818 00
Am't received April 11, 1871	301 52
Am't received April 15, 1871	100 00
Am't received April 18, 1871	20 00
Am't received April 19, 1881	553 16
Am't received April 20, 1871	25 00
Am't received April 22, 1871	1,491 58
Am't received April 25, 1871	826 52
Am't received April 26, 1871	184 80
Am't received April 29, 1871	167 09

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 7:"

Am't received May 19, 1871	$256 13
Am't received May 20, 1871	68 70
Am't received May 22, 1871	555 22
Am't received May 25, 1871	299 68
Am't received May 29, 1871	31 55
Am't received May 31, 1871	49 95

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due, as 80 per cent of estimate of said engineer marked "No. 8:"

Am't received June 2, 1871	$490 30
Am't received June 7, 1871	632 45
Am't received June 10, 1871	1,275 47
Am't received June 24, 1871	333 62
Am't received June 29, 1871	524 55
Am't received July 1, 1871	1,884 31
Am't received July 4, 1871	259 12
Am't received July 5, 1871	2,152 17

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of the estimate of said engineer marked "No. 9:"

Am't received July 10, 1871	$290 96
Am't received July 15, 1871	411 79
Am't received July 19, 1871	294 67
Am't received July 21, 1871	582 33
Am't received July 26, 1871	431 97
Am't received July 28, 1871	449 15
Am't received July 29, 1871	299 24
Am't received Aug. 5, 1871	100 00
Am't received Aug. 22, 1871	123 68
Am't received Aug. 24, 1871	72 00
Am't received Aug. 27, 1871	57 15
Am't received Sep. 5, 1871	50 00
Am't received Sep. 7, 1871	369 56

28 The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 10:"

Am't received Aug. 12, 1871	$125 00
Am't received Aug. 15, 1871	22 50
Am't received Aug. 17, 1871	165 85
Am't received Aug. 21, 1871	1,535 91
Am't received Aug. 22, 1871	291 26

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 11:"

Amount received Sept. 9, 1871	$175 00
Amount received Sept. 19, 1871	578 55
Amount received Sept. 26, 1871	56 70
Amount received Sept. 27, 1871	410 73
Amount received Sept. 28, 1871	203 30
Amount received Sept. 30, 1871	1,006 29

The following sums, received on c. about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of esti-
29 mate of said engineer marked "No. 12:"

Am't received Oct. 13, 1871	$166 99
Am't received Oct. 20, 1871	342 55
Am't received Oct. 31, 1871	1,073 61
Am't received Nov. 1, 1871	946 81
Am't received Nov. 2, 1871	421 12
Am't received Dec. 21, 1871	512 70
Am't received Dec. 22, 1871	665 21
Am't received Dec. 25, 1871	110 25
Am't received Dec. 26, 1871	180 85
Am't received Dec. 29, 1871	1,626 00
Am't received June 1, 1872	100 00
Am't received June 3, 1872	100 00
Am't received June 8, 1872	51 30
Am't received June 9, 1872	130 95
Am't received June 12, 1872	288 50
Am't received June 24, 1672	17 00

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 13:"

	Am't received Nov. 7, 1871	$291 10
	Am't received Nov. 8, 1871	218 03
	Am't received Nov. 10, 1871	3,204 12
30	Am't received Nov. 15, 1871	336 05
	Am't received Nov. 16, 1871	114 18
	Am't received Nov. 21, 1871	540 79
	Am't received Nov. 23, 1871	300 00
	Am't received Nov. 24, 1871	22 99
	Am't received Nov. 25, 1871	275 55
	Am't received Dec. 7, 1871	1,037 56
	Am't received Dec. 8, 1871	287 20
	Am't received Dec. 9, 1871	251 88
	Am't received Dec. 10, 1871	115 33
	Am't received Dec. 11, 1871	139 19
	Am't received Dec. 21, 1871	188 30

The following sum, received on or about the date set opposite thereto, was applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 14:"

	Am't received Dec. 21, 1871	$2,936 56

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 15:"

	Am't received April 4, 1872	$50 00
	Am't received April 8, 1872	730 10
31	Am't received April 18, 1872	55 00
	Am't received April 21, 1872	172 25
	Am't received April 30, 1872	244 70
	Am't received May 27, 1872	614 31
	Am't received May 29, 1872	66 60
	Am't received May 30, 1872	43 41
	Am't received June 1, 1872	60 00
	Am't received June 13, 1872	850 00
	Am't received Dec. 14, 1872	1,426 12
	Am't received Dec. 16, 1872	31 05
	Am't received Dec. 17, 1872	543 21
	Am't received Dec. 18, 1872	270 38
	Am't received Dec. 19, 1872	45 00
	Am't received Dec. 21, 1872	109 95

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 16:"

	Am't received May 3, 1872	$1,866 90
	Am't received May 4, 1872	53 00
	Am't received May 7, 1872	13 95
	Am't received May 8, 1872	591 85
	Am't received May 9, 1872	72 35
	Am't received May 13, 1872	128 30
	Am't received May 18, 1872	4,073 45
32	Am't received May 20, 1872	316 81

Am't received May 21, 1872	400 00
Am't received May 23, 1872	273 15
Am't received May 27, 1872	196 28

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 17:"

Am't received June 20, 1872	$1,684 90
Am't received June 22, 1872	90 50
Am't received June 29, 1872	250 00
Am't received July 20, 1872	6,860 05
Am't received July 21, 1872	409 44
Am't received July 22, 1872	697 63
Am't received " 23, 1872	89 92
Am't received " 26, 1872	620 53
Am't received " 29, 1872	400 00
Am't received Nov. 25, 1872	302 56
Am't received Nov. 26, 1872	2,262 72
Am't received Nov. 29, 1872	192 40
Am't received Dec. 3, 1872	64 41
Am't received Dec. 6, 1872	20 25
Am't received Dec. 7, 1872	1,972 42
Am't received Dec. 9, 1872	39 15
Am't received Dec. 11, 1872	806 67
33 Am't received Dec. 12, 1872	519 28
Am't received Dec. 14, 1872	48 42

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer marked "No. 18:"

Am't received July 1, 1872	1,460 80
Am't received July 2, 1872	1,043 56
Am't received July 5, 1872	2,188 19
Am't received July 6, 1872	328 10
Am't received July 12, 1872	5,272 10
Am't received July 13, 1872	75 00
Am't received July 17, 1872	120 00
Am't received July 20, 1872	2,148 70

The following sums, received on or about May 19, 1873, was applied in payment of the amount due on supplemental estimate marked "No. 20" and annexed to said petition, the estimate being date May 4, 1872, to wit:

Am't received May 19, 1873	$241 64

34 The following amount received May 29, 1873, was applied in payment of the amount due on supplemental estimate No. 21, made by said engineer May 29, 1873:

Am't received May 29, 1873	$307 82

The following sums received on or about the dates set opposite thereto were applied in payment for the amount due for the work and materials and indebtedness, mentioned in estimate of said engineer, marked No. 19, dated Dec. 28, 1872, and described as final estimate for Delhi division:

Am't received Dec. 29, 1872	210 50
Am't received Dec. 30, 1872	246 60

	Am't received Dec. 31, 1872	13 05
	Am't received Jan. 1, 1873	626 07
	Am't received Jan. 6, 1873	320 00
	Am't received Jan. 11, 1873	551 88
	Am't received Jan. 17, 1873	100 00
	Am't received Jan. 18, 1873	943 40
	Am't received Jan. 20, 1873	948 75
	Am't received Feb. 6, 1873	1,384 07
	Am't received Feb. 13, 1873	172 09
	Am't received Feb. 14, 1873	122 20
	Am't received Feb. 18, 1873	300 00
35	Am't received Feb. 20, 1873	237 84
	Am't received Feb. 24, 1873	139 75
	Am't received March 27, 1873	892 41
	Am't received April 24, 1873	289 80
	Am't received April 25, 1873	50 00
	Am't received April 28, 1873	100 00
	Am't received May 3, 1873	265 30
	Am't received May 19, 1873	1,062 13
	Am't received May 20, 1873	2,227 41
	Am't received May 27, 1873	914 85
	Am't received May 29, 1873	241 53
	Am't received May 31, 1873	255 75
	Am't received June 2, 1873	200 00
	Am't received June 3, 1873	39 33
	Am't received June 16, 1873	500 75
	Am't received June 26, 1873	908 75

The following amounts received on or about the dates set opposite thereto were applied in payment of last 20 per cent. of the indebtedness arising from the completion of the first five miles from the south end of the line mentioned in said contract:

	Am't received Aug. 9, 1872	406 24
	Am't received Aug. 14, 1872	39 85
	Am't received Nov. 15, 1872	65 86
36	Am't received Nov. 25, 1872	2,677 18

The following amounts received on or about the dates set opposite thereto were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the second five miles from the south end of the line mentioned in said contract, said five miles beginning in South Fork Township and ending in Delhi Township:

	Am't received Sept. 2, 1872	1,094 15
	Am't received Sept. 3, 1872	1,370 00
	Am't received Sept. 4, 1872	1,112 10
	Am't received Sept. 7, 1872	2,245 90
	Am't received Nov. 15, 1872	2,929 82

The following amounts received on or about the dates set opposite thereto were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the third five miles from the south end of the line mentioned in said contract, said five miles beginning in Delhi Township:

	Am't received Sept. 11, 1782	$500 00
37	Am't received Sept. 18, 1872	500 00

Am't received Sept. 30, 1872	527 45
Am't received Oct. 5, 1872	4,806 53
Am't received Oct. 7, 1872	38 25
Am't received Oct. 21, 1872	951 55
Am't received Oct. 22, 1872	463 50
Am't received Oct. 28, 1872	582 51
Am't received Nov. 11, 1872	682 63
Am't received Nov. 12, 1872	208 80
Am't received Nov. 13, 1872	275 10
Am't received Nov. 15, 1872	953 79

The following amounts received on or about the dates set opposite thereto were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the fourth five miles from the south end of the line mentioned in said contract, ending in Oneida Township:

Amount received Nov. 6, 1872	100 00
Amount received Nov. 7, 1872	400 00
Amount received Nov. 9, 1872	1,092 65
Amount received Nov. 11, 1871	4,087 00

The following amounts received on *on* or about the dates set op-
38 posite thereto were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the fifth five miles from the south end of the line mentioned in said contract:

Am't received Nov. 20, 1872	$149 10
Am't received Nov. 21, 1872	4 05
Am't received Nov. 22, 1872	457 12
Am't received Nov. 23, 1872	811 16
Am't received Nov. 25, 1872	1,189 93

The foregoing amounts comprise all of the payments received upon the indebtedness to plaintiff under said contract and all credits to which said Davenport and St. Paul Railroad Company are entitled.

Par. 25. Plaintiff alleges that the first five consecutive miles of work from the south line of Delaware County was completed by the plaintiff before, and accepted by said Davenport and St. Paul Railroad Company on the 31st day of July, 1872; the second five miles from the south
39 end of said line was completed before, and accepted by said railroad company on, the 15th day of August, 1872; the third five miles from the south end of said line was by plaintiff completed before, and accepted by said railroad company on, the 10th day of September, 1872; the fourth five miles from the south end of said line was completed by plaintiff before, and accepted by said railroad company on, the 31st day of October, 1872; the fifth five miles from the south end of said line was completed and accepted by said railroad company on the 31st day of October, 1872, and plaintiff says that the work on the entire line mentioned in said contract was completed by plaintiff before, and accepted by said railroad company and by said engineer on, the 31st day of October, 1872.

Par. 26. Plaintiff says that said work was performed upon and said materials were furnished for a work of internal improvement, to wit, said railroads; that said work and labor was performed and said mate-
40 rials furnished under a contract with said Davenport and St. Paul Railroad Company, upon the road-bed and bridges and culverts owned by said railroad company, including the road-bed and the land occupied by depot buildings, side-tracks, and all of the land belonging

to said railroad company in Delaware County, Iowa, and used in the operation of said railroad, and the same is still the property of said railroad company. That upon the 20th day of December, A. D. 1872, plaintiff filed in the office of the clerk of the district court of Delaware County, Iowa, a statement and account for a mechanic's lien, of which a copy marked A, is hereunto annexed and made a part of this petition, and in said statement is included a copy of the contract mentioned in the first paragraph of this petition.

Par. 27. And plaintiff says that the defendants, Lucius Howard,
41 The Davenport Railway Construction Company (a company organized under the laws of the State of Iowa), and John Edgar Thompson and William Dennison, trustees for certain bondholders of said Davenport and S't Paul Railroad, have liens upon said property, but the lien to which plaintiff is entitled by virtue of the premises is paramount to the respective liens of said defendants.

Par. 28. Wherefore plaintiff prays for judgment against said defendant, The Davenport and S't Paul Railroad Company, for the amount of fifty-five thousand dollars, besides interest and costs of suit, and for the enforcement of a mechanic's lien for that amount upon said property, including the railroad bed, track, depot grounds and buildings, and all fixtures connected therewith; that said lien be declared paramount to the liens of the respective defendants, and that said
42 defendants be foreclosed of and from all right of redemption from and after the sale thereof under execution issued upon said judgment, and that the defendant have such other or *or* further relief as may be equitable.

T. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA,
Delaware County, ss:

Par. 29. I, Charles F. Fleming, being duly sworn, say that I am president of the board of directors of the Delaware Railroad Construction Company, plaintiff named in the foregoing petition; that I have heard said petition read, and that the statements therein made are true, as I verily believe.

CHARLES F. FLEMING.

Signed by Charles F. Fleming in my presence and by him sworn to before me on this 15th day of January, A. D. 1874.

[SEAL.] G. G. BEVERIDGE,
Clerk Circuit Court.

43 A.

Statement and account for machanic's lien by D. R. C. Company upon Davenport and St. Paul Railroad against D. and S't P. R. Company.

The Delaware Railroad Construction Company have and claim a machanic's lien upon all that part of the Davenport and S't Paul Railroad included or lying within the county of Delaware and State of Iowa, including the road-bed, tracks, and all fixtures. Said machanic's lien exists and is claimed by virtue of work done and materials furnished for said construction company by virtue of a contract and subsequent to the date of the within contract between said companies, of which the following is a copy:

DAVENPORT AND S'T PAUL RAILROAD.

This agreement made and concluded this sixth day of August, one thousand eight hundred and seventy, between the Delaware Railroad Construction Company of the first part and the Davenport and S't
44 Paul Railroad Company of the second part, witnesseth:

The aforesaid party of the first part in consideration of the prices hereinafter agreed to be paid by the party of the second part, hereby covenants and agrees to grade and construct all of the line between the south and north line of Delaware County, of the Davenport and St. Paul Railroad, in such manner as shall conform in every respect to the annexed specifications, which shall be considered as part of this contract, and to the following conditions:

1st. The work shall be commenced within sixty days after the execution of this contract, and shall be completed on or before the day of , one thousand eighteen hundred and

2d. The work shall be executed under the direction and supervision of the engineer of the company for the time being; by whose meas-
45 urements and calculations the amounts of the several kinds of work performed under this contract shall be determined; and who shall have full power to reject or condemn all work or materials which, in his opinion, do not fully conform to the spirit of this agreement, and shall decide all questions which may arise between the parties relative to the execution thereof, and his decision shall be final and binding upon both parties.

3d. It is further agreed that this contract in every respect shall be prosecuted in such order and at such places and parts of the work, and at such times and seasons as the said engineer may direct, also in reference to a proper and economical use of the materials for the work, and any unnecessary waste of materials shall be made good by the said contractor.

4th. And the said contractors further promise and agree that
46 they will not of themselves or by their agent or agents, give or sell any ardent spirits to their workman or any other person on or near the line of said railroad, or allow any to be brought on the work by the laborers or any other person, and will do all in their power to discountenance its use in the vicinity of the work by persons in their employ.

5th.

6th. Any omission to disapprove of defective work at the time of any estimate shall not be construed as an acceptance of said work.

7th. If the party of the first part refuses or unreasonably neglects to remedy any imperfection which may be pointed out by the engineer or by the party of the second part, or fails to prosecute the work with the required dispatch, or in any manner violates the conditions of
47 this contract, so that, in the judgment of the engineer or in the judgment of the party of the second part, there may be just grounds of apprehension that the work will not be completed in the manner or within the time herein specified, then the engineer or said party of the second part may serve a written notice upon the said party of the first part, specifying the manner and time in which said party shall cause such grounds of apprehension to be removed; and if, at the expiration of said time, said grounds of apprehension are not removed, then full power and authority is hereby vested in said engineer or in said party of the second part to declare this contract forfeited, and such declaration being given in writing by the engineer or by said party of the second part to the party of the first part, or if said notice shall be

given by the engineers then to the parties hereto, this contract
48 shall cease immediately, and the said party of the second part shall be entitled to the reserved percentage as a consideration for the damages that may be sustained by reason of the forfeiture of this contract. All fences must be kept up so as not to allow cattle to escape or crops to be destroyed. In consideration of the faithful performance of all the conditions of this contract the party of the second part agrees to pay said party of the first part on the estimates of the engineer, as follows:

For grubbing, cleaning, and side chopping the section as specified, per acre, ten dollars.

For earth excavation at the rate of 20 cents per cubic yard for excavation of rock, including stone measuring over one cubic yard, at the rate of one dollar for solid rock per cubic yard; loose rock, seventy cents per cubic yard.

49 For timber and plank in bridges and wood culverts, at the rate of thirty-five dollars per M f't, board-measure.

For piles in foundations and for piles in bridges, at the rate of fifty cents per foot for all piles twenty feet long or less, and sixty cents per foot for all piles over twenty feet per lineal foot, to be one foot in diameter at center, and may be black walnut, red elm, white oak, or burr oak.

For wrought iron in bridges at the rate of

For cast iron in bridges at the rate of

Iron to be furnished by the party of second part, cents per pound.

For ties, fifty-five cents each, to be eight feet long and six inches thick, one-fourth to have at least nine, one-fourth eight, one-fourth seven, and one-fourth six inches face, and may be white oak, burr oak, black oak, red elm, black walnut, and white walnut, but not more than
50 one-fourth black oak, and to be delivered on the line at most convenient points in view of hauling, and to be designated by engineer.

The prices above specified are to be in full compensation for all materials and labor required to put the same into the work herein contracted for, and complete the same in all respects as provided in this contract. In order to enable the contractor to prosecute the work advantageously, the said engineer shall make an estimate from time to time, not oftener than once per month, as the work progresses, both on work done and materials delivered on the line of said railroad. The said party of the second will pay in current money eighty per cent. of the amount of said estimate; twenty (20) per cent. of the estimates, as they are made to the party of the first part, may be retained by the party of the second part as damages in case of a forfeiture of this
51 contract; which said (20) twenty per cent., together with the whole amount of this contract, according to the terms thereof, and on the estimate of the engineer, shall be paid to the party of the first part within thirty days after all the work herein contracted for is completed and accepted by the engineer. "Qualified below."

The above payments on estimates shall be made every thirty (30) days, at the office of the president of said Davenport and S't Paul Railroad Company, in Davenport. The Davenport and S't Paul Railroad Company may stop all work at any time, without payment of damages, by giving thirty days' notice.

Whenever five consecutive miles of work from the south line of Delaware County are completed by the party of the first part, and accepted

by the party of the second part, the party of the second part shall pay the full amount of the contract price for said work on said five
52 miles within thirty days after said work is accepted, without the deduction of said twenty per cent., and for every additional five consecutive miles of the south end of the work completed by said first party, said second party shall pay in like manner within thirty days after the same has been accepted, and so on through the country from south to north.

Signed this 6th day of August, A. D. 1870.

R. EDDY, *Pres.*
J. M. BRAYTON, *Sec'y.*
F. B. DOOLITTLE, *Treas.*
Board of Directors of the Delaware Railroad Construction Company.

All the money for the work hereinbefore specified to be paid by the citizens of Delaware County.

H. PRICE,
Pres't Dav. and S't Paul R. R. Co.

The following is a just and true account of the labor done and materials furnished by virtue of said contract, and of all credits to this
53 date, and of the amount due from said railroad company to said construction company, including interest.

Copy of ac.

The Davenport and S't Paul Railroad Company to the Delaware Railroad Construction Co. D'r.

To excavation of 486,703 y'ds of earth, at 20c. per yard....	$97,384 60
To excavation of 12,425 y'ds of solid rock, $1.00 per y'd....	12,425 00
To excavation of 22,310 y'ds of loose rock, 70c.....	15,617 00
To 402,080 f't timber for bridges and culverts, at $35.00 per M.....	16,173 01
To 15,351 f't timber not use', at $15.00 per M	230 27
To 63,398 ties, at 55c each.....	34,868 90
To grubbing and clearing $44\frac{66}{100}$ acres, at $10.00 per acre....	446 60
To 97 yards riprap, at $1.25 per yard.....	121 25
To 3,264 f't piling, 20 f't and under, at 50c per foot.....	1,632 00
To 11,680 f't piling, 20 f't and over, at 60 per foot.....	7,008 00
To interest to Dec. 19, 1872.....	5,000 00
	$190,862 63

54 *Davenport and S't Paul Railroad Company, Cr.*

By amount paid to date.....	$119,697 05
Bal. due D. R. Construction Company.....	71,165 58

And for which it has and claims a mechanic's lien upon the Davenport and S't Paul Railroad, situated within Delaware County, Iowa.

R. EDDY, *Pres.*
A. E. MARTIN, *Sec'y.*
Treas.
Board of Directors of D. R. Construction Company.

STATE OF IOWA,
Delaware County, ss:

I, Ancil E. Martin, being duly sworn, say that I am the secretary of the Delaware Railroad Construction Company; that I have read the foregoing statement and account, and that the same is true, as I verily believe, and that the said account is justly due, and said balance of $71,165.58 is owing by said Davenport and S't Paul Railroad
55 Company to said Delaware Railroad Construction Company, as I verily believe.

ANCIL E. MARTIN.

Subscribed to by Ancil E. Martin in my presence, and by him sworn to before me on this 20th day of December, A. D. 1872.

A. J. BROWN,
Clerk District Court Del. Co., Iowa.

Filed Dec. 20, 1872.

A. J. BROWN, *Clerk.*

Copy of resolution and proceedings of the board of directors of the Delaware Railroad Construction Company.

B.

DELHI, *July 1st*, 1872.

At a meeting of the board of directors of the Delaware Railroad the Construction Company, held at the office of said company in Delhi, Iowa, July 1st, 1872, the following certified copy of a resolution passed June 5th, 1872, by the executive committee of the board of
56 directors of the Davenport and S't Paul Railroad Company, was read, spread upon the records, and placed on file, to wit:

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Co., held at the office of the company, No. 47 Brady st., Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents and does agree to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit: The words, "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County," on the condition and agreement by the said company by a resolution by its board of directors to abate of its claim under said contract the sum of two thousand dollars on final settlement.

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P. R. R.
57 Co., at *at* a meeting held by them on the 5th day of June, 1872.

In witness whereof I have hereunto set my hand and affixed the corporation seal of said company this 6th day of June, A. D. 1872.

[SEAL.] W. H. PRICE,
Sec. D. S't P. R. R. Co.

When the following resolution was unanimously adopted:

Resolved, That the terms of a resolution passed by the executive committee of the board of directors of D. and S't P. R. R. Co., a copy of which has just been spread upon the records and placed on file, be and are

hereby accepted, and that we hereby agree to abate of our claim two thousand dollars on final settlement, as conditioned in said resolution.

Adjourned.

A. E. MARTIN,
Sec'y Del. R. R. Con. Co.

Copy of a resolution and proceedings of the board of directors of the Davenport and S't Paul Railroad Company.

58 C.

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul Railroad Company, held at the office of the company, No. 47 Brady st., Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents, and does hereby agree, to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6th, 1870, to wit, the words, "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County," on the condition and agreement by the said company by a resolution of its board of directors to abate of its claims under said contract the sum of two thousand dollars on final settlement.

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P.
59 R. R. Co. at a meeting held by them on the 5th day of June, A. D. 1872.

In witness whereof I have hereunto set my hand and affixed the corporation seal of the said company, this 6th day of June, A. D. 1872.

[SEAL.] W. H. PRICE,
Sec'y D. and S't P. R. R. Co.

ESTIMATE NO. 1.

1870.

Nov. 15. From Oct. 15 to Nov. 15, 1870.

Delhi Division Dav. and S't Paul R. R. Co. to Delaware Co. R. R. Construction Co., Dr.

For excavating 18,005 cub. y'ds of earth at 20 c. per cub. y'd.	$3,601 00
For furnishing and putting in box culverts, 2,252 feet, B. M., plank, at $35.00 per M	78 82
Total	$3,679 82
Less 20 per cent	735 96
Amount now due	2,943 86

E. BALDWIN,
Chief Engineer.

ESTIMATE NO. 2.

From Nov. 15, 1870.

DAVENPORT, *Dec.* 15, 1870.

60 *Davenport and S't P. R. R. Co. to Delaware R. R. Construction Co., Dr.*

For excavating 20,091 cub. y'ds of earth, at 20 cents per yard, on Delaware Division	4,018 20
For excavating 123 cub. y'ds of solid rock, at $1.00	123 00

For excavating 900 cub. y'ds loose rock, at 70 c. per cub. yard.	630 00
For putting in 1262 f't, B. M., of box culverts, at $35.00 per M.	44 17
For grubbing and clearing $4\frac{58}{100}$ acres, at $10 per acre	45 80
Total	$4,861 17
Less 20 per cent	972 23
	3,888 94

E. BALDWIN,
Chief Engineer.

ESTIMATE NO. 3.

DELHI, *January* 30, 1871.

From Dec. 15th to Jan'y 10, 1871.

Dav. and S't Paul R. R. Co. to the Delaware R. R. Construction Co., Dr.

For excavating 18,104 cub. y'ds of earth, at 20 cents per cub. yard	$3,620 80
For excavating 412 cub. y'ds of solid rock, at $1.00 per y'd	412 00
61 For excavating 239 cub. y'ds of loose rock, at 70 c. per yard	167 30
For furnishing and putting in 1,536 f't, B. M., $35.00 per M, box culverts	53 76
For grubbing and clearing $\frac{34}{100}$, at $10	3 40
For furnishing 1,004 ties, at 55 cents for each	552 20
Total	4,809 46
Less 20 per cent	961 89
	3,847 57

E. BALDWIN,
Chief Engineer.

ESTIMATE NO. 4. JANUARY ESTIMATE.

FEB'Y 1ST, 1871.

From Jan'y 10th to Feb'y 1st, 1871.

Dav. and S't P. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 2,445 cub. y'ds of earth on Delhi, the division, at 20 cents per yard	489 00
For excavating 738 cub. y'ds of solid rock, at $1.00	738 00
For excavating 770 cub. y'ds of loose rock, at 70 c. per yard	539 00
62 For furnishing and putting in box culverts, 464 B. M., of plank, at $35.00 p. M	16 24
For grubbing and clearing one acre, at $10.00	10 00
For furnishing 2,738 ties, at 55 c. per each	1,307 90
Total	3,000 14
Less 20 per cent	600 00
	2,400 12

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 5. FEBRUARY ESTIMATE.

M'CH 1ST, 1871.

Dav. and S't Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For furnishing 3,728 ties, at .55 for each	2,050 40
Less 20 per cent.....	410 80
	1,640 32

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 6.

Estimate up to the 1st of April, 1871.

ENGINEER'S OFFICE,
Delhi, Delaware County, Iowa.

Davenport and S't Paul R. R. Co., to Delaware R, R. Construction Co., Dr.

63 For excavating 10,550 cub. y'ds of earth at 20 cents per yard.....	2,110 00
For excavating 1,274 cub. y'ds of solid rock, at $1.00	1,274 00
For excavating 3,859 cub. yards of loose rock at 70 c. per yard.....	2,701 30
For furnishing 11,686 ties, at 55 cents each.....	6,427 30
For furnishing 445 feet of piling, at 25 c. per foot	111 25
For grubbing and clearing one acre at $10.00.....	10 00
Total	$12,633 85
Less 20 per cent	2,526 77
	10,107 08

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 7.

ENGINEER'S OFFICE,
Delhi, April 1st, 1871.

Estimate for Delhi division for month ending 31st April, 1871.

Dav. and S't Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For excavating 24,684 cub. yards of earth at 20 c. per yard..	$4,936 80
For excavating 1,392 cub. yards of solid rock, at $1.00 per yard.....	1,392 00
For excavating 1,906 cub. yards of loose rock, at 70 cents per y'd.....	1,334 20
64 For furnishing and putting in 2,700 f't, B. M., of lumber in box culverts, at $35.00 per M.....	94 50
For furnishing and delivering 1,605 R. R. ties, at 55 cents for each	882 75

For furnishing and delivering 2,095 feet lineal of piling, at 25 cents per foot	523 75
For grubbing and clearing 5 and $\frac{35}{100}$ acres, at $10.00 per acre	53 30
Total	$9,217 50
Less 20 per cent	1,843 50
Amount due	7,374 00

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 8.

ENGINEER'S OFFICE, *Delhi, June 1st*, 1871.

Dav. and St. Paul R. R. Co., to Delaware Railroad Con. Co., Dr.

For excavating 33,053 cub. yards of earth, at 20 cents per cub. yard	$6,610 60
For excavating 853 cub. yards of solid rock, at $1.00	853 00
For excavating 2,398 cub. yards of loose rock, at 70 cents per yard	1,678 60
For furnishing and putting in 3,656 feet B. M., at $35.00 per M.	127 96
65 For furnishing and delivering 1,542 railroad ties, at 55 cents	848 10
For furnishing and delivering 2,096 feet (lineal) of piling, at 25 cents per foot	524 00
For grubbing and cleaning 15 acres, at $10.00 per acre	15 00
	$10,657 26
Less 20 per cent	2,131 45
	$8,525 81

B. BALDWIN,
Chief Engineer.

ESTIMATE N.o 9.

ENGINEER'S OFFICE, *Delhi, July 10th*, 1871.

Dav. and S't P. R. R. Co., to Delaware R. R. Construction Co., Dr.

For excavating 28,325 cub. yards of earth on the Delhi Division, at 20 cents	$5,665 00
For excavating 1,149 cub. yards of solid rock, at $1.00	1,149 00
For excavating 1, 347 cub. yards of loose rock, at 70 cents per yard	942 90
For furnishing and putting in 3,341 f't b. m. lumber in box culverts, at $35.00 per M	116 93
66 For furnishing and delivering 2,066 ties, at 55 cents for each	1,136 30
For furnishing and delivering 914 feet (lineal) of piling, at 25 cents per foot	228 50

For grubbing and cleaning 4 acres, at $10 per acre	40 00
For furnishing stone and laying 12 cubic y'ds of riprap, at 50 c	6 00
	$9,284 63
Less 20 per cent	1,856 92
	$7,427 71

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 10.

ENGINEER'S OFFICE, *Delhi, Aug.* 7, 1871.

Dav. and S't Paul R. R. to Delaware R. R. Construction Co., Dr.

For excavating 10,879 cub. y'ds of earth, at 20 cents per yard	$2,175 80
For excavating 264 cub. y'ds of solid rock, at $1	264 00
For excavating 50 cub. y'ds of loose rock, at 70 cents per yard	35 00
For furnishing 2,436 B. M. feet put in box culverts, at $35 per M	85 26
For furnishing and delivery 50 railroad ties, at 55 c'ts.	27 50
67 For grubbing and clearing 6 and $\frac{97}{100}$ acres, at $10 per acre	69 70
	$2,657 26
Less 20 per cent	531 45
	2,125 81

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 11.

ENGINEER'S OFFICE, *Delhi, Sept.* 9, 1871.

Dav. and S't Paul R. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 28,957 cub. y'ds of earth, at 20 cents per y'd		5,791 40
For excavating 351 cub. y'ds of solid rock, at $1 per y'd		351 00
For excavating 685 cub. yards of loose rock, at 70 c'ts per y'd		479 50
For furnishing material and putting in 2,392 feet B. M. in box culverts, at $35.00 per M		83 72
For furnishing 157 ties, at 55 cents each		86 35
For grubbing and clearing 1½ acres, at $10 per acre		15 00
For furnishing and driving 780 lineal feet of piling at 50 cents per foot, and 500 feet at 60 cents per foot		
68 For furnishing and putting up 24,572 feet b. m. of timber in bridging, at $35 per M	$1,550 02	
Less previous estimate for piles delivered	$1,387 50	
		162 52
		$6,969 40
Less 20 per cent		1,393 89
		$5,575 60

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 12.

ENGINEER'S OFFICE, *Delhi, Oct. 4th*, 1871.

Dav. and S't Paul R. R. Co. to Delaware Construction Company, Dr.

For excavating 26,554 cub. yards of earth, at 20 cents per yard		$5,310 80
For excavating 775 yards of solid rock, at $1 per yard		775 00
For excavating 509 cub. yards of loose rock, at 70 cents per yard		356 30
For furnishing material and putting in 3,468 f't b. m. in box culverts, at $35 per M		121 38
For furnishing and delivering 103 ties, at 55 c'ts each		56 65
For grubbing and clearing 2 and $\frac{45}{100}$ acres, at $10 per acre		24 50
69 For putting in 15 yards of riprap, at 50 cents		750 00
For furnishing and driving 300 lineal feet piling, at 50 cents per foot, 20 feet long		150 00
For furnishing and driving 3,500 feet of piling, over 20 feet long, at 60 cents per foot		2,100 00
For furnishing material and erecting 18,828 feet b. m. of bridging, at $35 per M		658 98
	$9,561 11	
Less 20 per cent.	1,912 22	
		$7,648 89

ESTIMATE No. 13. FOR MONTH OF OCTOBER.

ENGINEER'S OFFICE, *Delhi, Nov.* 4, 1871.

Dav. and S't Paul R. R. Company to Delaware R. R. Construction Co, Dr.

For excavating 18,733 cub. y'ds of earth, at 20 cents per yard		$3,746 60
For excavating 563 cub. yards of solid rock, at $ per yard		563 00
For excavating 229 cub. yards of loose rock, at 70 c. per yard		160 30
For furnishing material and putting 1,780 feet b. m. in box culverts, at $35 per M		62 30
70 For grubbing and clearing $1\frac{25}{100}$ acres, at $10 per a.		12 50
For furnishing and driving 80 lineal feet of piling, 20 feet long, at 20 cents per foot		40 00
For furnishing and driving 3,222 lineal feet of piling, over 20 feet long, at 60c. per f't		1,933 20
For furnishing materials and erecting 74,583 feet b. m. of bridging, at $35 per M		2,610 40
	9,128 30	
Less 20 per cent	1,825 66	
		$7,302 64

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 14. FOR NOVEMBER.

ENGINEER'S OFFICE, *Dec.* 15, 1871.

Dav. and S't Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For excavating 11,787 cub. y'ds of earth, at 20c. per yard ..	2,357	40
For excavating 50 cub. y'ds solid rock, $1 per y'd.....	50	00
For excavating 88 cub. y'ds of loose rock, at 70c. per y'd....	61	60
For furnishing material and putting in 1,500 feet B. M. lumber in culverts.....	52	50
71 For grubbing and clearing $1\frac{75}{100}$ acres, at $10 per acre.	17	50
For furnishing and driving 930 lineal f't of piling over 20 f't in length, at 60c. per foot.....	558	00
For furnishing 16,287 f't B. M. of bridge timber, at $35 per M	570	04
	$3,667	04
Less 20 per cent	733	41
	$2,933	63

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 15, MADE APRIL 1, 1872.

ENGINEER'S OFFICE, *Delhi, April* 25, 1872.

Dav. and S't Paul Railroad Co., to Delaware R. R. Construction Co., Dr.

For excavating 6,011 cub. y'ds of earth, at 20 c'ts per yard..	$1,202	20
For excavating 290 cub. yards of solid rock, at $1 per yard.	290	00
For excavating 250 cubic yards of loose rock, at 70c. per yard.	175	00
For furnishing and delivering 80,000 feet B. M. of bridging, at $25 per M.....	2,000	00
For furnishing and delivering 12,359 ties, at 55 cents each	6,797	45
72 For furnishing and delivering 1,630 lineal feet of piling, at 25c. per foot.....	407	50
For furnishing and delivering 2,100 lineal f't of piling, at 60c. per foot.....	1,260	00
	$12,132	15
Less 20 per cent	2,426	43
	$9,705	72

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 16.

ENGINEER'S OFFICE, *Davenport, May 1st*, 1872.

Davenport and S't Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For excavating 25,457 cub. y'ds of earth, at 20c. per y'd....	$5,091	40
For excavating 700 cub. y'ds of solid rock, at $1 per yard ..	700	00
For excavating 2,800 cub. y'ds of loose rock, at 70 cents per yard.....	1,960	00

For furnishing and putting in box culverts, 2,624 f't, B. M., of lumber, at $35 per M	91 84
For furnishing and driving 700 lineal f't of piling, at 50c. per f't	350 00
For furnishing and delivering 3,138 ties, at 55 cents each	1,725 90
73 For grubbing and clearing four acres, at 10 per acre	40 00
Total for the month of April	9,959 14
Less 20 per cent	1,991 82
	7,967 31

E. BALDWIN.
Chief Engineer.

ESTIMATE NO. 17. ESTIMATE FOR MAY, 1872.

ENGINEER'S OFFICE,
Davenport, June 15th, 1872.

Davenport and St. Paul R. R. Company, to Delaware Rail. Construction Co., Dr.

For excavating 82,229 cub. y'ds of earth, at 20 cents per y'd	$16,445 80
For excavating 983 cub. y'ds of solid rock, at $1 per y'd	983 00
For excavating 2,193 cub. y'ds of loose rock, at 70 cents per y'd	1,535 10
For furnishing material and putting 8,780 feet B. M. of lumber in box culverts, at $35 per M	307 30
For furnishing and delivering 6,328 ties, at 55 cents each	3,480 40
	22,751 60
Less 20 per cent	4,550 32
	18,201 28

E. BALDWIN,
Chief Engineer.

74 ESTIMATE NO. 18.

ENGINEER'S OFFICE, *July 1st*, 1872.

Dav. and St. P. R. R. Co., to Delaware Railroad Construction Co., Dr.

For earth excavation, 34,143 cub. y'ds, at 20 c'ts per y'd	$6,828 60
For solid rock excavation, 758 cub. yards, at $1	758 00
For loose rock excavation, 878 cub. yards, 70 cents per yard	614 60
For furnishing ties, 5,939, at 55 cents each	3,266 45
For furnishing and driving piling, 1,260, at 50 c't per foot (lineal)	630 00
For furnishing and driving piling, 1,378, at 60 cents per foot (lineal)	826 80

For furnishing and putting up bridging, 81,356 feet board measure, at $35 per M	2,847 46
	15,771 91
Less 20 per cent	3,154 38
	12,617 53

E. BALDWIN,
Chief Engineer.

No. 19.

Final estimate of Delhi division.

ENGINEER'S OFFICE,
75 *Davenport, Dec.* 28, 1872.

Dav. and St. Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For earth excavation, 486,058 cub. yards, at 20 cents per yard	$97,211 60
For solid rock ex., 12,425 cub. yards, at $1 per c. yard	12,425 00
For loose rock ex., 22,310 cub. yards, at 70 c'ts per yard	15,617 00
For furnishing material and building culverts and bridges, 462,086 feet B. M., at $35 per M	16,173 01
For furnishing and delivering ties, 63,461, at 55 cents	34,903 55
For riprap, 27 cub. y'ds, at 50 cents per yard	13 50
For riprap, 70 cub. y'ds, at $1.15 per yard	80 50
For piling not over 20 feet in length, 3,264, lineal, at 50 cents per foot	1,632 00
For piling, 11,680, at 60 c'ts per foot	7,008 00
For grubbing and clearing 45.66 acres, at $10 per acre	456 66
	185,520 76

The above is a final estimate for the Delhi division, and includes all former estimates.

E. BALDWIN,
Chief Engineer.

76 SUPPLEMENTAL ESTIMATE NO. 20.

Davenport and S't Paul Railroad to Boon and Martin, Dr.

To lumber furnished for bridges, 15,551 feet, B. M., at $15.50 per M	$241 04

Approved May 4th, 1873.

E. BALDWIN,
Chief Engineer.

SUPPLEMENTAL ESTIMATE NO. 21.

MAY 29, 1873.

Davenport and S't Paul Railroad Co. to Delaware R. R. Const. Co. Delhi, Dr.

For furnishing and delivering ties, 152, at 55 cents.....	$83 60
For furnishing lumber and putting same in box culverts, 235 f't, at $35 per M	8 22
For earth excavation, 1,080 cub. y'ds, at 20 c'ts per yard.....	216 00
	307 82

Approved.

E. BALDWIN,
Chief Engineer.

Due service of copy of this petition is admitted this 15th day Jan'y, 1874.

PETERS AND HEATH,
Att'ys for Def't, the D. and S't Paul R. Co.

77 Filed Jan'y 15, 1874.

G. B. BEVERIDGE,
Clerk.

And afterwards there was filed in the office of the clerk of said court for said Delaware County, Iowa, an amended petition in said cause, in words and figures following, to wit:

Amended petition in equity

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

Par. 1st. The plaintiff in the above-entitled suit, by way of amendment to their original petition filed in said suit, says that the
78 amount of $443.49, mentioned in the 24th paragraph of said petition as having been paid on the 11th day of February, A. D. 1871, and applied in part payment of Estimate No. 4, should have been $493.49.

Par. 2d. That the sum of $30 was paid on or about the 1st day of June, 1871, and applied in part payment of the indebtedness due as 80 per cent. of Estimate No. 8, made by said engineer and described in said original petition.

Par. 3. That the amount of $123.68 mentioned in said paragraph No. 24 as having been paid upon the 22nd day of August, A. D. 1871, and applied in part payment of the indebtedness due as 80 per cent. of Estimate No. 9, should be the sum of $133.68.

Par. 4. That the amount of $291.26 mentioned in said paragraph as having been paid on the 22nd day of August, A. D. 1871, and applied in part payment of the indebtedness due as 80 per cent. of Esti-
79 mate No. 10 of said engineer should be $281.26.

Par. 5. That the sum of $578.55 mentioned as having been paid on the 19th day of September, 1871, and applied in part payment of the indebtedness due as 80 per cent. of the estimate of said engineer marked "No. 11" in said petition should be $598.55, and is hereby corrected.

Par. 6. That the amounts of $100.00 mentioned as having been paid June 1st, 1872, and $100.00 June 3rd, 1872, and applied in payment of the 80 per cent. of Estimate No. 12 in the engineer's report referred to in said petition, should be, one on January 1st, 1872, the other January 3rd, 1872. That the following amounts, applied in payment of the indebtedness of 80 per cent. of Estimate No. 12 aforesaid, and in said petition mentioned as paid in the month of June, 1872, should be on the corresponding days of the month of February, 1872, to wit:

$51.36, dated June 8, should be Feb'y 8, 1872.
130.95, " " 9, " " " 6, 1872.
80 288.50, " " 12, " " " 12, 1872.
17.00, " " 24, " " " 14, 1872.

Par. 7. That the following amounts, received on or about the respective dates set opposite thereto, were also applied in payment of the indebtedness for the work and materials mentioned in Estimate No. 19, of said engineer, called final estimate in said petition, to wit:

Amt. received May 22, 1873	$250 00
Amt. received May 26, 1873	224 15
Amt. received May 29, 1873	100 00

Par. 8. That the amount of $255.74, mentioned in said petition as having been paid on the 31st day of May, 1873, and applied upon the indebtedness arising from the work and materials mentioned in Estimate No. 19, called final estimate, should be $235.74.

Par. 9. That the above, with the amounts mentioned in plaintiff's original petition, are all the payments made to plaintiff upon the
81 contract described in said petition, and all of the payments included in this and said original petition, in the aggregate amount only to the total sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents.

Par. 10. That the amount of indebtedness due under the respective estimates and upon said contract have been demanded many times of said Davenport and S't Paul Railroad Company, and said railroad company has refused and still refuses to pay the same.

Par. 11. The plaintiff alleges that the statements of the original petition as amended herein are true, and asks judgment and relief as prayed for in said original petition.

J. M. BRAYTON,
Att'y for Pl'ff.

STATE OF IOWA,
Delaware County, ss:

82 I, Ancel E. Martin, being duly sworn, say that I am secretary of the board of directors of the plaintiff named in the foregoing petition, that I have read the same and know its contents, and that the matters and things therein stated and set forth are true, as I verily believe.

ANCEL E. MARTIN.

Subscribed by Ancel E. Martin in my presence and by him sworn to before me on this 19th day of January, 1874.

[SEAL.] G. B. BEVERIDGE,
Clerk.

Service of a copy of the within petition admitted this 19th day of Jan'y, 1874.

PETERS AND HEATH,
Att's for Def't.

Filed Jan'y 19, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards there was filed in the office of the clerk of said court an original notice, in words and figures following, to wit:

Original notice.

In the circuit court, Delaware County, Iowa.

83 THE DELAWARE RAILROAD CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND ST. PAUL RAILROAD COMPANY, JOHN EDGAR THOMPSON AND WILLIAM DENNISON, TRUSTEES FOR CERTAIN BONDHOLDERS OF SAID RAILROAD, THE DAVENPORT RAILWAY CONSTRUCTION COMPANY AND LUCIUS HOWARD.

To the Davenport and St. Paul Railroad Company, John Edgar Thompsom and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company and Lucius Howard:

You are hereby notified that on or before the 15th day of January, A. D. 1874, there will be on file in the office of the clerk of the circuit court of Delaware County, Iowa, a petition of The Delaware Railroad Construction Company, claiming of you the sum of fifty five thou-
84 sand dollars, as money due to said plaintiffs from said Davenport and St. Paul Railroad Company, for breach of contract, and for work, labor, and services performed, and materials furnished in the construction of that portion of said railroad situated in Delaware County. Also claiming a mechanic's lien on said road, and the enforcement thereof as against all of said defendants for said amount. And you are notified that unless you appear thereto and defend, on or before noon of the second day of the January term, A. D. 1874, of said court, which will commence at Delhi on the 26th day of January, A. D. 1874, default will be entered against you, and judgment will be rendered thereon for the amount above claimed, with interest and costs of suit, and for the enforcement of said lien.

No personal claim is made against any of said defendants, except The Davenport and St. Paul Railroad Company—January 9th, 1874.

J. M. BRAYTON,
Att'y for Plaintiff.

85 Attached to which was a return of the sheriff of said Delaware County, Iowa, in words and figures following, to wit:

THE STATE OF IOWA,
Delaware County, ss.:

I do hereby certify and return that the within original notice came to hand for service on the 10th day of January, A. D. 1874, and that the

same day I served the same on the within-named defendant, the Davenport and St. Paul Railroad Company, by reading the same to S. S. Summers, personally, and in his presence and hearing, and by delivering to him personally a true copy thereof. The said S. S. Summers being station and ticket agent for said company in Delhi, Delaware County, Iowa. Done in Delhi, Delaware County, Iowa. The other defendants not found by me in my county.

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Fees:—Service, 50; mileage (8 miles), 40; copy, 40; $1.30.

86 Filed January 26, 1874.

G. B. BEVERIDGE,
Clerk.

And afterwards, to wit: On the 28th day of January, 1874, there was filed in the office of the clerk of said circuit court, an answer in words and figures following, to wit:

In chancery.—Answer.

In the circuit court of the State of Iowa, in and for Delaware County.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company and others.

And now, January term, 1874, comes the defendant, The Davenport and St. Paul Railroad Company, and for an answer to the petition of the plaintiff herein, says: It admits the making and delivery of the contract in said petition mentioned, admits that under the said contracts
87 the plaintiff performed the work shown by the estimates set forth in the said petition, admits that there is a balance unpaid to the plaintiff of the contract-price of the said work, but avers that it hath no knowledge or information concerning the amount thereof.

Further the said defendant avers, that at or about the time of the making of the said contract, the defendant deposited in the hands of a certain F. B. Doolittle, then and for a long space of time the treasurer of the plaintiff corporation, stock subscriptions and promissory notes amounting to the sum of eighty-three thousand five hundred dollars or thereabout, the same to be taken and collected and the proceeds applied to the payment of the plaintiff for the work performed by them under the said contract, and for other purposes, a large amount of which was so collected and so applied. That defendant cannot now specifically state the items making up the said sum, but is informed and believes that if an account be taken, as hereinafter prayed, the
88 same can be fully shown by the books and papers of the plaintiffs. Furthermore, the defendant avers that it turned over to the said Doolittle a large amount of taxes voted in the townships of South Fork and Delhi, and authorized said Doolittle to take and receive the same for the purposes aforesaid, of which the said Doolittle took and received a large amount of money, to the defendant unknown, and appropriated a large amount thereof, to the defendant unknown, for the payment of the plaintiff for said work.

Further, the defendant avers that it hath paid to the said Doolittle,

for the purposes aforesaid, a large amount of money, to wit, the sum of seventy thousand dollars or thereabouts, upon the drafts of the said Doolittle, a large amount of which has been by him appropriated to the payment of the plaintiff for the work aforesaid. And thereupon the defendant prays that an account be taken of the said several matters herein set forth, and the amount of moneys received therefrom
89 by plaintiff be ascertained.

2. Further, the defendant shows that the plaintiff now holds two certain promissory notes of defendant for the sum of $5,000 each, taken as a conditional payment of a part of the money due for the said work; and thereupon the defendant prays that the plaintiff be required to surrender up and cancel the said notes, or that upon the election of the plaintiff to retain the same the same to be taken as a payment to plaintiff of so much of their claim.

3. Def't avers that heretofore, to wit, at the October term of the district court of Delaware County, by the consideration of the said court, a certain Westphall, Hinds and Co. recovered against the said plaintiffs the sum of $2,513.38, and obtained a decree of the said court establishing their lien against the property of this defendant for the payment of their said judgment.

The record and proceedings in the said last-mentioned cause
90 are hereby made a part of this answer, the said judgment being for work and labor done and performed by a certain S. Denton and Co. for the plaintiff, in the construction of defendant's road-bed, and thereupon defendant prays that the said judgment, with the interest and costs thereon, be credited to the defendant upon the claim of the plaintiff. And thereupon the defendant prays that an account be taken and a decree rendered in accordance with the prayers subjoined to the several paragraphs hereof.

PETERS AND HEATH,
Def'ts Att'ys.

STATE OF IOWA,
Delaware County, ss:

I, James D. Campbell, being duly sworn, do say that I am the general solicitor of the def't, the Davenport and St. Paul Railroad Company, and as such it became my duty to examine all the books and papers of defendant in relation to the several transactions in this answer
91 mentioned; that thereby I have knowledge thereof; that I have read the foregoing petition and know the contents thereof; that the statements thereof are true, as I verily believe.

J. D. CAMPBELL.

Subscribed by J. D. Campbell in my presence and by him sworn to before me on this 28th day of January, A. D. 1874.

[SEAL.] W. A. HEATH,
Notary Public of Iowa in and for Delaware County.

Filed Jan'y 28, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 30th day of January, 1874, it being the fifth day of the January term, 1874, of said court, the plaintiff filed a reply to the answer of the said Davenport and St. Paul Railroad Company on file in said cause, in words and figures following, to wit:

Reply.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
92 THE DAVENPORT AND ST. PAUL RAILroad Company and others.

The said plaintiff, for reply to the answer of defendant filed in said suit, says that the stock subscriptions and promissory notes mentioned in said answer as amounting to the sum of eighty-three thousand five hundred dollars or thereabouts were deposited with said F. B. Doolittle as an officer of said railroad company, defendant, and not as treasurer or officer of plaintiff, said Doolittle at the time of such deposit and for some years thereafter being and acting as assistant treasurer of said defendant and being now an officer of said defendant.

And plaintiff says that the taxes mentioned in said answer as having been received by said Doolittle were received by him as assistant treasurer of defendant and not as an officer of plaintiff; that a large
93 amount of the seventy thousand dollars or thereabouts mentioned in said answer as having been received by said Doolittle upon the drafts of defendant were received by him as said assistant treasurer of defendant; that a large amount, to wit, the sum of twenty thousand dollars, was unpaid at maturity and was returned to defendant and that all of the remainder paid to plaintiff has been credited to defendant in said plaintiff's petition. Plaintiff says that F. B. Doolittle is not now and has not been during the pendency of this suit, nor for a long time previous thereto, an officer or treasurer of plaintiff; but that he is and for a long time hitherto has been an officer, to wit, a member of the board of directors of defendant, the D. and St. Paul Railroad Company.

2. Plaintiff says that one of the two notes of $5,000 each mentioned in said answer has been returned to defendant since the com-
94 mencement of this suit, and plaintiff is ready and offers to surrender the other note of $5,000 mentioned to defendant for cancellation.

3. Plaintiff says that the judgment mentioned in said answer in favor of S. Denton and Co. has not been paid, and plaintiff is willing that defendant shall have credit therefor upon claim in this suit whenever said defendant shall pay said claim, and not until such payment.

Plaintiff therefore prays judgment and decree as asked for in his petition.

J. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA,
Delaware County, ss:

I, Ancel E. Martin, being duly sworn, say that I am an officer, to wit, secretary and member of the board of directors of plaintiff, named in the foregoing reply; that I have read the same, and that the
95 statements therein made are true, as I verily believe.

[SEAL.] ANCEL E. MARTIN.

Subscribed and sworn to by Ancel E. Martin, before me and in my presence, on this 30th day of January, 1874.

G. B. BEVERIDGE, *Clerk*,
By H. C. HAEBERLE, *Deputy*.

Filed Jan'y 30, 1874.

G. B. BEVERIDGE, *Clerk*.

And afterwards, to wit, on the 14th day of February, 1875, the referee duly appointed by said court in this cause filed his report in said cause with the clerk of said court in words and figures following, viz:

To the Hon. S. Bagg, judge of the circuit court of Delaware County, Iowa:

The undersigned, referee, appointed at the January term of the
96 circuit court of Delaware County, Iowa, to report the amount due the plaintiff in the case pending in the said court entitled "The Delaware Railroad Construction Company vs. The Davenport and S't Paul Railroad Company et al.," respectfully submits this report.

And, after taking the oath hereto annexed, the parties came before me, at my office in Delhi, the plaintiff appearing by J. M. Brayton, and the defendant, the Davenport and S't Paul Railroad Company, by Peters and Heath, when I proceeded to receive evidence and take testimony. The examination was commenced on the 9th and completed on the 12th day of February, 1874, as shown by the minutes hereto attached.

Upon examining the case with the evidence and testimony introduced, I find that the defendant, the Davenport and S't Paul Railroad Company, was indebted to the plaintiff on the 6th day of February, 1874, upon the claim in controversy in this suit, in the sum of fifty-one
97 thousand nine hundred and thirty dollars and fifty-four cents ($51,930.54), and that the plaintiff, the Delaware Railroad Construction Company, is entitled to a judgment against said Davenport and S't Paul Railroad Company for said sum of $51,930.54 and costs of suit, to be taxed by the clerk of said court, said judgment to date and bear interest from the said 6th day of February, 1874, at the rate of six per cent. per annum.

I further find that the plaintiff is entitled to a judgment of the same date establishing a mechanic's lien, as prayed in the petition in this suit, said lien to date from the 29th day of Sept., 1870.

In ascertaining the amount due the plaintiff as aforesaid I allowed the defendant a credit of two thousand ($2,000) dollars upon the contract, as shown in the Exhibit C and D, as shown in said minutes, deducting that sum as of the 6th day of Feb'y, 1874.

98 The following persons were sworn and examined as witnesses, viz: F. B. Doolittle, A. E. Martin, and R. Eddy. The following is the number of days' attendance of each witness, respectively:

F. B. Doolittle, 3 days; A. E. Martin, 3 days; R. Eddy, 1 day. The following is the amount of time spent by the referee, viz:

On the 9th day of February, 4 hours.
On the 10th day of " 4 hours.
On the 11th day of " 4 hours.
On the 12th day of " 5 hours.

I find that F. B. Doolittle did not receive any stock subscriptions, promissory notes for collection, or taxes as an officer of plaintiff and that all drafts received by F. B. Doolittle have been credited by plaint-

iff to defendant, except such as have been returned to the defendant by the said Doolittle, and one note for $5,000, which is hereto attached, marked "Exhibit B," and which is offered by plaintiff for cancellation.

99 I further find that judgment in favor of Westphall, Hinds and Co. for work done by S. Denton and Co. for the plaintiff, as stated in defendant's answer, is a lien upon the road-bed of the defendant, and in case said defendant shall pay said judgment of Westphall, Hinds and Co., or any part thereof, such payment shall operate as a payment by defendant upon the judgment in this suit.

HENRY HARGER, *Referee.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucuis Howard.

100 On this 9th day of February, 1874, at 9 o'clock a. m., the parties appeared in this case before Henry Harger, referee; the plaintiff appearing by J. M. Brayton, its attorney, and the defendant, the Davenport and S't Paul Railroad Company, by Peters and Heath, its attorney's; and by consent of counsel appearing, the hearing of this case is adjourned till 2 o'clock this afternoon.

No appearance of the other defendant is made.

On this 9th day of Feb'y, 1874, at 2 o'clock p. m., parties appearing as at 9 o'clock this morning, plaintiff submits in evidence the contract between said Davenport and S't Paul Railroad Company and the Delaware Railroad Construction Company, and the 21 estimates of the engineer said contract, and estimates being the originals, copies of which are annexed to plaintiff's petition; also a receipt from J. S. Conner, treas. of D. and S't P. R. R. Co., to F. B. Doolittle for a note

101 of $5,000, a copy of which is hereto attached, marked "Exhibit A." Plaintiff also offers a note for $5,000, dated Dec. 4, 1873, made by said Dav. and S't Paul R. R. Co. to F. B. Doolittle, treas. Delaware R. R. Construction Co., which is hereto attached, marked "Exhibit B."

Plaintiff also offers a certified copy of a resolution adopted by the board of directors of said D. and S't P. R. R. Co. June 5, 1872, a copy of which is hereto attached, marked "Exhibit C." Plaintiff also offers a certified copy of a resolution of the board of directors of the Delaware Railroad Construction Company, which is hereto attached, marked "Exhibit D."

Plaintiff then introduced F. B. DOOLITTLE as a witness, who, being first duly sworn, testifies as follows:

Are you an officer of plaintiff now?

Ans. No.

Int. 2. Are you an officer of the defendant, the railroad company?

Ans. I am.

102 Int. 3. Were you formerly an officer of plaintiff? and, if so, state what office.

Ans. I was formerly treasurer of the plaintiff.

Int. 4. What was the entire amount received by you while you were treasurer of plaintiff, did you receive from the defendant?

Ans. One hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents.

Int. 5. As treasurer of plaintiff, did you receive any stock subscription or promissory notes for collection?

Ans. No.

Int. 6. Did you, as officer of the plaintiff, receive any taxes levied in South Fork or Delhi Townships?

Ans. No.

Int. 7. Aside from the two notes of $5,000 each, one of which
103 has been introduced before the referee, and the receipt for the other, have you received from the defendant any drafts that were not included in the sum you have mentioned?

Ans. None but what have been returned to defendant.

Cross examination:

Int. 1. In what capacity did you receive stock subscriptions and the taxes referred to by you in your direct examination?

Ans. As assistant treasurer of the defendant.

Int. 2. Have any payments been made to plaintiff by defendant other than those made to you as treasurer of plaintiff, so far as you know?

Ans. There have not, so far as I know.

Ins. 3. State the times of the several payments made to plaintiff by defendant, as the same appears on your books or from your accounts.

104 Ans. I have a schedule of accounts which I here submit showing the time and amounts of said payment.

Pending the further answer to this question the examination was adjourned till to-morrow morning at 9 o'clock a. m.

On this 10th day of February, 1874, at 9 o'clock a. m., examination resumed. The witness compares items in the schedule with those in the petition. At 1 o'clock p. m. examination was adjourned till 2 o'clock p. m. on the 11th day of Feb'y, 1874.

On this 11th day of February, 1874, at 2 o'clock p. m., examination resumed, and testimony of A. E. Martin taken, after which the examination was adjourned till the 12th day of February, 1874, at 2 o'clock p. m. The testimony of A. E. Martin is hereto attached.

On the 12th day of February, 1874, at 2 o'clock p. m., examination resumed, and the testimony of R. Eddy taken, which is hereto attached.

105 The schedule of accounts submitted by F. B. Doolittle on the 9th day of February, having been compared with the petition, was found to be substantially the same, with the following exceptions:

1st. A credit of $2,695.45, which should appear as of the 6th day of March, 1873, instead of the same amount of money which had been credited in smaller amounts on the 27th, 29th, and 31st of May, and 2d, 3d, 16th, and 26th days of June, 1873.

2d. Of a credit on the 20 day of April of 1873, $831.22; of a credit on the 29 day of April of 1873, 193.26; of a credit on the 5 day of May of 1873, 232.80; of a credit on the 5 day of May of 1873, 457.06; of a credit on the 2 day of May of 1873, 97.08; of a credit on the 31
106 day of Jan'y of 1873, 360.45; which amounts had been credited as of the 20th day of May, 1873.

At this point both parties said they had no further evidence and testimony to produce, and the matter was submitted to the referee.

Testimony of A. E. Martin (*R. Eddy*).

This 12th day of February, 1874, R. EDDY, being duly sworn, testifies as follows, viz:

Int. 1st. What office, if any, do you hold for the plaintiff?

Ans. Treasurer.

Int. 2. Have you been a member of that corporation since its origin? I have.

Int 3. State what person or persons besides yourself have been treasurer of said company.

Ans. F. B. Doolittle.

107 Int. 4. Is he the only person other than yourself who has been treasurer of plaintiff?

Answer. Yes.

Int. 5. While you were treasurer of plaintiff has there been any payment made to you as such treasurer by the Davenport and S't Paul Railroad Company?

Ans. No.

Int. 6. Have you now or have you had since you were treasurer any books of said company?

Ans. No.

Int. 7. State what papers you, if any, *you* have in your possession as treasurer of plaintiff while you have held this office.

Ans. The note and receipt filed with the referee, and a statement of accounts made by F. B. Doolittle.

108 Int. 8. Did the statement of accounts you refer to show any greater credit to the Davenport and S't Paul R. R. Co. than the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents ($139,189.46)?

Answer. No.

Testimony of R. Eddy (*A. E. Martin*).

This 11th day of Feb'y, 1874, A. E. MARTIN, being duly sworn, says:

Int. 1. Are you an officer of plaintiff?

Ans. I am.

Int. 2. What office do you hold?

Ans. Secretary.

Int. 3 Do the books in your office show that the payments made by the defendant to plaintiff exceed the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents?

Ans. They do not.

109 Int. 4. How long have you been secretary of plaintiff?

Ans. Since December, 1870.

EXHIBIT A.

Copy of receipt of J. S. Conner, treas.

DAVENPORT AND S'T PAUL RAILROAD CO.,
Davenport, Iowa, Jan'y 27th, 1874.

F. B. DOOLITTLE, Esq., *Delhi, Iowa:*

DEAR SIR: I am to-day in receipt of yours of the 26, enclosing company's promissory note, dated Dec. 3, 1873, at sixty days for $5,000, given to you as treasurer of Delaware R'y Construction Company.

Yours, respectfully,

J. S. CONNER, *Treas.*

EXHIBIT B.

Copy of note attached to report of referee.

DAVENPORT, IOWA, *Dec.* 4, 1873.

$5,000.]

Sixty days after date we promise to pay to the order of F. B. Doolittle, treas. of Delaware R. R. Const. Co., five thousand dollars, at the Davenport National Bank, value received, with ten per cent. interest after maturity.

Davenport National Bank.

110 DAV. AND S'T PAUL R. R. CO.,
By J. S. CONNER, *Treas.*

EXHIBIT C.

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Co., held at the office of the company, No. 47 Brady street, Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents, and does agree, to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit, the words "all the money for the work hereinbefore specified to be paid by the citizens of Delaware County," on the condition and agreement by the said company, by a resolution of its board of directors, to abate of its claim under said contract the sum of two thousand dollars on final settlement.

111 I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P. R. R. Co., at a meeting held by them on the 5th day of June, A. D. 1872.

In witness whereof I have hereunto set my hand and affixed the corporate seal of the said company this 6th day of June, A. D. 1872.

[SEAL.] W. H. PRICE,
Sec't'y D. and S't P. R. R. Co.

EXHIBIT D.

DELHI, *July 1st*, 1872.

At a meeting of the board of directors of the Delaware Railroad Construction Company, in Delhi, Iowa, July 1st, 1872, the following certified copy of a resolution passed June 5th, 1872, by the executive committee of the board of directors of the Davenport and S't Paul Railroad Company was read, spread upon the records, and placed on file, to wit:

112 "At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Co., held at the office of the company, No. 47 Brady street, Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

"Resolved, That this company hereby consents and does agree to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit, the words 'all the money for the work hereinbefore specified to be paid by the citizens of Delaware County,' on the condition and agreement of the said company by a resolution of its board of directors to abate of

its claim under said contract the sum of two thousand dollars on final settlement."

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P.
113 R. R. Co., at a meeting held by them on the 5th day of June, A. D. 1872.

In witness whereof I have hereunto set my hand and affixed the corporation seal of said company this 6th day of June, A. D. 1872.

[SEAL.]

W. H. PRICE,
Secret'y D. and S't Paul R. R. Co.

When the following resolution was unanimously adopted:

Resolved, That the terms of a resolution passed by the executive committee of the board of directors of the D. and S't P. R. R. Co., a copy of which has just been read, spread upon the records, and placed upon file, be and are hereby accepted, and that we hereby agree to abate of our claim two thousand dollars on final settlement, as conditioned in said resolution.

Adjourned.

A. E. MARTIN,
Sec't'y of Del. R. R. Con. Co.

I hereby certify that the above is a true and exact copy of a resolution and proceedings of the executive committee of the Delaware
114 R. R. Con. Co., at a meeting held by them on the 1st day of July, A. D. 1872.

In witness whereof I have hereunto set my hand this 9th day of Feb'y, 1874.

A. E. MARTIN,
Sec'y Del. R. R. Con. Co.

STATE OF IOWA,
Delaware County:

I, Henry Harger, being duly sworn, say that I will well and faithfully hear and examine the case pending in the circuit court of Delaware County, Iowa, entitled The Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company and others, wherein I have been appointed referee, and that I will make a just and true report therein, according to the best of my understanding.

HENRY HARGER.

Signed by Henry Harger in my presence and by him sworn to
115 before me on this 9th day of February, A. D. 1874.

[SEAL.]

JAMES L. STONE,
Notary Public.

The foregoing report of Henry Harger having been submitted and examined by me is approved, and the clerk of the circuit court of Delaware County is directed to enter judgment and decree in accordance with the finding and report of said referee, and the minutes made at the Jan. term of the circuit court of Delaware County in the case of the Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company and others, to bear date upon February 6, 1874.

Dated this 13th day of Feb., 1874.

S. BAGG,
Circuit Judge 9th Jud. Dist.

Filed Feb'y 14, 1874.

G. B. BEVERIDGE, *Clerk.*

116 And afterwards, to wit, on the 6th day of February, A. D. 1874, it being the 11th day of the regular January term, 1874, of the said circuit court, and on the 14th day of February, 1874, after the close of said term, and in the vacation of said court, the following proceedings were had, done, and entered of record in the proper records of the said circuit court, by the clerk of said court, in words and figures following, to wit:

Petition to enforce mechanic's lien.

THE DELAWARE RAILROAD CONSTRUCTION Company.
against
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141.

On this 6th day of February, A. D. 1874, this cause came on
117 for hearing upon the defendant's motion for a reference, the plaintiff, the Delaware Railroad Construction Company, appearing by J. M. Brayton, and the defendant the Davenport and S't Paul Railroad Company appearing by Peters and Heath; and the motion for a reference is overruled, and the court proceeds to receive evidence in the cause; when, by agreement of the parties, to wit, the plaintiff and the Davenport and S't Paul Railroad Company, the case as to these parties is referred to Henry Harger, esq., who appears in open court and accept the appointment of referee, with power to examine witnesses, book, and papers and accounts, and upon the findings of said referee being reported to the judge of this court, a judgment, by agreement of said parties in open court, is to be entered of the amount due, and a decree for a machannic's lien to be made establishing such lien; the hearing to commence on Monday morning, Feb'y 9th, 1874, at
118 nine o'clock a. m., at the office of said Harger in Delhi, Iowa, and to continue from day to day until completed.

And by said agreement of said parties the judgment is to be entered as of the last day of this January term, 1874, of this court, and the cause is by order, of court continued as to all the defendants except said Davenport and S't Paul Railroad Company.

The said referee having, in accordance with said agreement and said order, taken the proper oath and proceeded with the hearing and examination of said cause, and having filed his report upon this 14th day of February, 1874, with the approval of said judge, to whom the same had been submitted:

In accordance with said agreement and the findings of said referee and the order of said judge, the following judgment and decree is entered:

It is ordered, adjudged, and decreed that the defendant, the
119 Davenport and S't Paul Railroad Company, pay to said plaintiff the sum of fifty one thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit, taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the said 6th day of February, A. D. 1874, and judgment for said sum and costs is rendered against said defendant, the Davenport and S't Paul Railroad Company, and in favor of said plaintiff, to bear interest at the rate of six per cent. per

annum. It is further ordered, adjudged, and decreed that a machanic's lien be established in favor of said plaintiff upon the following property of the defendant, to wit: The portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, in-
120 cluding the right of way the road-bed, the track, depot building, side tracks and land on which the same are situated, and all fixtures connected with said grounds and building, and all the right, title, and interest of said defendant in and to the land upon which said improvements are situated, said lien to date from the 29th *twenty-ninth* day of September, A. D. 1870, and to continue in force against said Davenport and S't Paul Railroad Company, and all persons having and claiming liens or right to said property from said railroad company subsequent to that date, until final payment of said judgment and costs.

It is also ordered, adjudged, and decreed said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant, the Davenport and S't Paul Railroad Com-
121 pany, for the payment of said judgment, costs, and accruing costs.

It appearing from the pleadings and the report of the referee that Westphal, Hinds & Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by S. Denton and Co. for the present plaintiff upon said railroad, and that a machanic's lien be established by said judgment for $2,531.38, it is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphal, Hinds and Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit; and it appearing from the report of said referee that the stock subscriptions, promissory notes, and taxes mentioned in defendant's answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor,
122 and this cause is continued as to all the defendants except said Davenport and St. Paul R. R. Co.

This decreed this 6th day of February, A. D. 1874.

And afterwards, during the further progress of said cause in said court, and on the 6th day of April, 1874, plaintiff filed in the office of the clerk of the said circuit court an affidavit, in words, and figures following, to wit:

STATE OF IOWA,
Delaware County, ss:

I, J. M. Brayton, being duly sworn, say that I am attorney for the plaintiff in the suit pending in the circuit court of Delaware County, Iowa, entitled The Delaware Railroad Construction Company against The Davenport and S't Paul Railroad Company, John Edgar Thompson, William Dennison, trustees of certain bondholders of said railroad, and other defendants, and that personal service of original notice in
123 said suit cannot be made upon the defendants John Edgar Thompson and William Dennison, trustees of certain bondholders of said railroad, within the State of Iowa, and they are non-residents of said State of Iowa.

J. M. BRAYTON.

Subscribed to and sworn to by J. M. Brayton, before me, on this 6th day of April, A. D. 1874.

[SEAL.]

G. B. BEVERIDGE,
Clerk District C't Del. Co., Iowa,
By H. C. HABERLE, *Dep'y.*

Filed Apr. 6th, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, during the further progress of said cause in said court, and on the 7th day of April, 1874, plaintiff filed in the office of the clerk of said circuit court a supplemental petition in words and figures following, to wit:

Supplemental petition.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
124 THE DAVENPORT AND S'T PAUL RAILroad Company, John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, and others.

And now comes the plaintiff in this suit and states that since the commencement of this suit, to wit, on the 6th day of February, A. D. 1874, a decree has been rendered by this court against the Davenport and S't Paul Railroad Company, a copy of said decree being hereto annexed, and made a part of this supplemental petition, by which judgment was rendered against said railroad company in favor of said plaintiff for the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, besides costs of suit, and the machanic's lien claimed in the original petition in this suit was established as claimed in said petition.

Wherefore plaintiff asks that the remaining defendants be
125 foreclosed of all rights of redemption of the property described in said original petition; that said lien be established against the remaining defendants in said suit; that it be declared paramount to all claims of said defendant, and that plaintiff have such other and further relief as may be equitable.

J. M. BRAYTON,
Att'y for Pl'ff.

STATE OF IOWA,
Delaware County, ss:

I, A. E. Martin, being duly sworn, say that I am secretary of the company plaintiff in the above-entitled suit, and member of the board of directors of said company; that I have heard said petition, above written, read and know its contents, and that the statements therein made are true, as I verily believe.

A. E. MARTIN.

Signed by A. E. Martin in my presence, and by him sworn to before me on this 7th day of April, A. D, 1874.

[SEAL.]

G. B. BEVERIDGE, *Clerk,*
By H. C. HABERLE, *Deputy.*

126 *Copy of record mentioned in foregoing petition.*

Petition to enforce mechanic's lien. Drawn by J. M. Brayton.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141.

On this 6th day of February, A. D. 1874, this cause came on for hearing upon the defendants' motion for a reference, the plaintiff, the Delaware Railroad Construction Company, appearing by J. M. Brayton, and the defendant, the Davenport and St. Paul Railroad Company, appearing by Peters and Heath, and the motion for a reference is overruled, and the court proceeds to receive evidence in the cause; when, by agreement of the parties, to wit, the plaintiff and the Davenport
127 and S't Paul Railroad, the case, as to these parties, is referred to Henry Harger, esq., who appears in open court and accepts the appointment of referee, with power to examine witnesses, books, papers, and accounts, and upon the findings of said referee being reported to the judge of this court, a judgment, by agreement of said parties in open court, is to be entered of the amount due, and a decree for a mechanic's lien to be made establishing such lien, the hearing to commence on Monday morning, February 9th, 1874, at 9 o'clock a. m., at the office of said Harger, in Delhi, Iowa, and to continue from day to day until completed; and by said agreement of said parties the judgment is to be entered as of the last day of this January term, 1874, of this court, and the cause is by order of court continued, as to all of the defendants except said Davenport and St. Paul Railroad Company.

The said referee having, in accordance with said agreement and
128 said order, taken the proper oath and proceeded with the hearing and examination of said cause, and having filed his report upon this 14th day of February, 1874, with the approval of the said judge, to whom the cause had been submitted in accordance with said agreement, and the finding of said referee, and the order of the said judge, the following judgment and decree is entered:

It is ordered, adjudged, and decreed that the defendant, the Davenport and S't Paul Railroad Company, pay to said plaintiff the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit, taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the 6th day of February, A. D. 1874, and judgment for said sum and costs is rendered against said defendant, the Davenport and S't Paul Railroad Company, and in favor of
129 said plaintiff, to bear interest at the rate of six per cent. per annum.

It is further ordered, adjudged, and decreed that a mechanic's lien be established in favor of said plaintiff upon the following property of the defendant, to wit, the portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county as the same is laid and operated, including the right of way, the road-bed, the track, depot-buildings, side-track, and land on which the

same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of said defendant, in and to the land upon which said improvements are situated, said lien to date from the 29th (twenty-ninth) day of September, A. D. 1870, and to continue in force against said Davenport and S't Paul Railroad Company, and all persons having or claiming liens or right to said property
130 from said railroad company subsequent to that date until the final payment of said judgment and costs.

It is also ordered, adjudged, and decreed that said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant, the Davenport and S't Paul Railroad Company, for the payment of said judgment, costs, and accruing costs.

It appearing from the pleadings and the report of the referee that Westphall, Hinds and Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by S. Denton and Co. for the present plaintiff upon said railroad, and that a mechanic's lien was established by said judgment for $2,531.38, it is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphall,
131 Hinds and Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit; and it appearing from the report of said referee that the stocks, subscription, promissory notes, and taxes mentioned in defendant's answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor.

Thus decreed this 6th day of February, A. D. 1874.

STATE OF IOWA,
Delaware County, ss:

I, G. B. Beveridge, clerk of the circuit court of Iowa in and for Delaware County, do hereby certify that the above and foregoing is a true copy and transcript of decree and judgment entry in the action wherein the Delaware Railroad Construction Company is plaintiff and the Davenport and S't Paul Railroad Company et al. defendant, as fully as the same appears of record in my office.

132 In witness whereof I have hereunto set my hand and affixed the seal of said court at my office in Delhi, in said county, this 28th day of March, A. D. 1874.

[SEAL.]

G. B. BEVERIDGE, *Clerk*,
By H. C. HAEBERLE, *Deputy*.

Filed April 7, 1874.

G. B. BEVERIDGE, *Clerk*.

And afterwards, to wit, on the 5th day of May, 1875, in the further progress of said cause in said court, there was filed in the office of the clerk of said court, an affidavit of J. B. Swinburne, publisher, with a copy of original notice attached thereto, in words and figures following, to wit:

STATE OF IOWA,
Delaware County, ss:

I, J. B. Swinburne, being duly sworn, depose and say that I am publisher of the Delhi Monitor, a newspaper published weekly in
133 Delhi, in said county, and that the notice in the case of Dela-

ware R. R. Construction Co. vs. The D. and S't P. R. R. Co., a copy of which is hereto attached, was published in said newspaper for official notice, for four weeks consecutively, the first publication having been made on the 9th day of April, 1874, and the last on the 30th day of April, 1874.

J. B. SWINBURNE.

Subscribed by J. B. Swinburne and by him sworn to before me, clerk circuit court in and for Delaware County, Iowa, this 5th day of May, 1874.

Witness my hand and seal the date last above written.

[SEAL.] G. B. BEVERIDGE, *Clerk*,
By H. C. HAEBERLE, *Dep'ty*.

Printer's fees, $16.85; acknowledgment, 25—$17.10. G. B. B.

134 *Original notice.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard.

To the Davenport and S't Paul Railroad Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard:

You are hereby notified that there is now on fil[illegible] th[illegible] office of the clerk of the circuit court of Delaware County, Iowa, a petition of the Delaware Railroad Construction Company, claiming of the Dav-
135 enport and S't Paul Railroad Company the sum of fifty-five thousand dollars (55,000) as money due upon contract, and for work, labor, and services performed, and materials furnished in the construction of that portion of the Davenport and S't Paul Railroad situated in Delaware County, and claiming a mechanic's lien upon all of said portion of said railroad, and asking that said lien be established and enforced upon all of said portion of said railroad, including road-bed, right of way, tracks, culverts, bridges, depot grounds, depot buildings, and all fixtures thereto, as against all of said defendants.

You are also notified that there is on file an amended petition and a supplemental petition, claiming that judgment and decree had been rendered in this suit on the 6th day of February, A. D. 1874, against said defendant, the Davenport and S't Paul Railroad Company, for the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four
136 cents ($51,930.54) and costs of suit and establishing said mechanic's lien as above claimed, and asking that said mechanic's lien be established and enforced against all of said defendants, and that they be barred of all right of redemption of said property above mentioned.

And unless you appear and answer, or make defense thereto, on or before noon of the second day of the May term of said circuit court, which

will commence at Delhi on the 18th day of May, A. D. 1874, default will be entered against you, and judgment and decree will be rendered by said court as above claimed, and as asked in said petition.

J. M. BRAYTON,
Attorney for Plaintiff.

Filed May 5, 1874.

G. B. BEVERIDGE,
Clerk.

And afterwards, during the further progress of said cause in said court and on the 6th day of May, 1874, the sheriff of Delaware County returned to the clerk of said court the execution before issued in said cause,
137 with the return of his doings under by virtue of said execution, in words and figures following, to wit:

Execution.

STATE OF IOWA,
Delaware County, ss:

The State of Iowa to the sheriff of Delaware County, Iowa, greeting:

Whereas on the 6th day of February, A. D. 1874, in an action pending in the circuit court of Delaware County, Iowa, wherein the Delaware Railroad Construction Company was plaintiff and the Davenport and S't Paul Railroad Company and others were defendants, said court rendered judgment in favor of said Delaware Railroad Construction Company, and against said Davenport and S't Paul Railroad Company, for the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents debt, besides costs of suit, taxed at $121.30, and also establishing plaintiff's mechanic's lien for said sum upon, and ordered
138 that said lien be enforced against, the following described property of said defendant, to wit: All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated:

Now, therefore, you are hereby commanded to cause to be made of the property, goods and chattels, lands and tenements, including the property above described, the said sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents debt, and interest thereon at the rate of six per cent. per annum from said 6th day of February, A. D. 1874, and $121.30 costs, together with all legal costs
139 that may accrue by virtue of this writ by levy and sale thereof according to law.

And have you said sums of money before our said court within seventy days from the date hereof, to render to the said plaintiff, and have you then and there this writ, with your doings hereon.

Witness G. B. Beveridge, clerk of said court, with the seal thereof hereto affixed this 17th day of February, A. D. 1874.

[SEAL.] G. B. BEVERIDGE,
Clerk Circuit Court Delaware County, Iowa.

Sheriff's return of execution.

STATE OF IOWA,
Delaware County, ss:

I, Abner Dunham, sheriff of Delaware County, Iowa, do certify and return that the annexed execution came to hand for service on the 17th day of February, A. D. 1874, at 3½ o'clock p. m.; that on the
140 same day I levied upon the following-described property in Delaware County, Iowa, as the property of the Davenport and S't Paul Railroad Company, to wit: All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land upon which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated.

And on the 18th day of February, A. D. 1874, I proceeded to advertise for sale, by posting up three notices thereof, one of which was posted on the front door of the court-house in Delhi, that being the place where the last district and circuit courts were held in said county, and one notice in a public place in Oneida township, and one notice in a
141 public place in Delaware Township, in said county, and by publication thereof for two consecutive weeks before the day of sale in a weekly newspaper printed and published in Delhi, in said county, and called the Delhi Monitor.

That afterwards, to wit, on the 19th day of March, A. D. 1874, at 9¼ o'clock a. m., an order was served upon me, a copy of which is hereto annexed, marked "Exhibit A," whereby action in this execution is stayed until further orders; and whereas, on the 4th day of April, A. D. 1874, a stipulation in writing was entered into by the parties, agreeing that the plaintiff or sheriff have the right to proceed with the execution issued without further order from the judge of said court, that said stipulation or agreemeent was filed in the clerk's office of the circuit court of Delaware County, Iowa, on the 4th day of April, A. D. 1874.

And I further certify and return that, by virtue of said execution and the filing of said stipulation, I did on the 4th day of April,
142 A. D. 1874, advertise by posting written and printed notices thereof at three public places in said county, one of which was posted on the front door of the court-house,in Delhi, where the last district court was held in said county, and one in Milo Township, and one in Oneida Township in said county, and by causing said notice to be published for two weeks in the Delhi Monitor, a newspaper printed and published in Delhi, in said Delaware County, Iowa; that on the 4th day of May, A. D. 1874, I caused said property to be appraised by two disinterested householders of the neighborhood; one of whom, to wit, Wm. Price, was chosen by J. M. Brayton, attorney for pl'ff; and the other, to wit, Albert Booner, was chosen by the officer issuing the writ, who returned to me in writing the appraisement as made by them, signed and sworn to; said appraisement bill is hereto annexed, marked "Exhibit B," and made a part of this return. And I further certify and
143 return that on the 4th day of May, A. D. 1874, at ten o'clock a. m., pursuant to said notice, at the front door of the court-house in Delhi, in said county of Delaware, I offered at public auction the depot buildings and depot grounds at the village of Hopkinton in said county, and no bid was made therefor, and then offered separately the depot buildings and grounds at the village of Delhi, Delaware, and

Greely, and no bid was made for either of them. I then offered for sale separately each mile of said railroad, commencing at the south line of said county, and no bid was made therefor. I then offered for sale all of said property levied upon, and R. Eddy, treasurer of plaintiff, offered therefor the sum of $53,100, in trust for said plaintiff and there being no higher bid made at said sale, the *sum* was sold to R. Eddy, treasurer of said Delaware Railroad Construction Co., for the sum of $53,100; and I on said day executed to said purchaser a deed of said
144 property, and gave him a certificate of purchase thereof, whereby said writ is partially satisfied.

I further certify that the following are the costs accruing on this writ since the same came into my hands, to wit:

Serving execution and mileage	$2 10
Writing notices	2 40
Mileage, posting notices	2 00
Notice of sale to defendant	2 40
Notice to choose app'r	1 60
Appr's fees	2 00
Publisher's fees	15 75
Deed	1 00
Sale, 1 day	1 00
Commission	$278 18
	$298 43

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Filed May 16, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 18th day of May, A. D. 1874, it being the first day of the regular May term, 1874, of said court, an orig-
145 inal notice, with the return of the sheriff, of Delaware County, Iowa, and of Scott County, Iowa, thereon, was filed in the office of the clerk of said court, the same being in words and figures following, to wit:

Original notice.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson and William Dennison trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

To the Davenport and S't Paul Railroad Company, John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard:

You are hereby notified that there is now on file in the office
146 of the clerk of the circuit court of Delaware County, Iowa, a petition of the Delaware Railroad Construction Company, claiming

of the Davenport and S't Paul Railroad Company the sum fifty-five thousand dollars, as money due upon contract, and for work, labor and services performed, and materials furnished in the construction of that portion of the Davenport and S't Paul Railroad situated in Delaware County, and claiming a mechanic's lien upon all of said portion of said railroad, and asking that said lien be established and enforced upon all of said portion of said railroad, including road-bed, right of way, tracks, culverts, railroad-bridges, depot-grounds, depot-buildings, and all fixtures thereto, as against all of said defendants.

You are also notified that there is on file an amended petition and a supplemental petition claiming that judgment and decree has been rendered in this suit, on the 6th day of February, A. D. 1874,
147 against said defendant, the Davenport and S't Paul Railroad Company, for the sum of $51,930.54 and costs of suit, and establishing said mechanic's lien as above claimed, and asking that said mechanic's lien be established and enforced against all of said defendants and that they be barred of all right of redemption of said property above mentioned.

And unless you appear and answer or make defense thereto on or before noon of the second day of the May term thereof of said circuit court, which will commence at Delhi on the 18th day of May, A. D. 1874, default will be entered against you and judgment and decree will be rendered by said court as above claimed and as asked in said petition.

J. M. BRAYTON,
Attorney for Plaintiff.

Rec'd this notice April 10, '74.

H. LEONARD,
Sheriff of Scott County, Iowa.

STATE OF IOWA,
Scott County, ss:

I hereby certify that on this 10th day of April, A. D. 1874, I
148 served the within notice upon the within-named defendant, the Davenport Railway Construction Co., by personally reading the same to J. M. Brown, superintendent of said company, and by delivering him a true copy thereof in the city of Davenport, Scott County, Iowa; the other within-named defendants not being found by me in Scott Co., Iowa.

HARVEY LEONARD,
Sh'ff of Scott County, Iowa.
By F. GEISE, *Deputy.*

Service 50, copy 50, mileage 20—$1.20.

STATE OF IOWA,
Delaware County, ss:

I do hereby certify and return that the within notice came to hand for service on the 26th day of April, A. D. 1874, and that, after due search, do return none of the within-named defendants found in my county except the Davenport and S't Paul Railroad Company, who have been served.

149

ABNER DUNHAM,
Sheriff Delaware Co., Iowa.

Fees, mileage (40 miles), $2.
Filed May 18, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 22d day of May, 1874, it being the 5th day of the regular May term, 1874, of the said court, in the further progress of said cause in said court, the following proceedings in said cause were had, done, and entered of record in the proper record of said court, to wit:

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company, John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

This cause is called for hearing, when, upon motion of
150 plaintiff, the case is dismissed as to the defendant Lucius Howard; and it appearing to the court from the inspection of the record and proofs in the case that the original notice in this case had been served upon the defendants, the Davenport Railway Construction Company and John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, more than ten days previous to the first day of this court, they having failed to answer, are adjudged to be in default; and upon hearing and considering the proofs submitted by plaintiff, the court finds the allegations of the original, amended, and supplemental petitions to be true.

It is therefore considered, ordered, and adjudged that plaintiff have the relief asked for in said petitions, and the mechanic's lien be established as against the above-named defendants, upon the property described in the former decree in this case at the February term, A.
151 D. 1874, and as therein established against said Davenport and St. Paul Railroad Company, and that said defendants be forever barred and foreclosed from all right of redemption of, in, or to the said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims or rights of said defendants to the same or any part thereof.

Thus decreed this 22d day of May, 1874.

Be it further remembered that afterwards, during the further progress of said cause in said court, at the January term, A. D. 1875, of said court, on the second day of said term, to wit, on the 26th day of January, 1875, there was filed in the office of the clerk of said court a notice for a new trial of said cause, on behalf of William Dennison, trustee, etc., and the answer of William Dennison, trustee, and with a bond for security for the costs of the retrial of the said cause, in the words and figures following, to wit:

Motion for new trial.

152 In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Co. and others.

Now comes William Dennison and shows to the court that he is the surviving trustee in a mortgage executed by the Davenport and St.

Paul Railroad Company to John Edgar Thompson and William Dennison, dated 1st July, 1871, and said mortgage was duly recorded in Delaware County on the 7th day of February, 1872.

That the said Delaware Railroad Construction Company on the 22nd day of May, 1874, recovered a judgment in this court against said Thompson and this defendant, in which proceedings they were not personally served with process, but the only mode in which said defendants were brought into court was by publication in a newspaper. And said
153 John Edgar Thompson died on the 23d day of May, 1874, and thereupon the said Dennison now comes into court and tenders adequate security for costs in said cause, and prays that the said trustee, W'm Dennison, survivor, may have a new trial in said cause.

GRANT AND SMITH,
for W'm Dennison.

Filed January 26, 1875.

J. B. SATTERLEE, *Clerk.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

I do hereby enter myself security for costs for W'm Dennison, who applies for a new trial in this cause, and acknowledge myself bound to pay all costs which may be adjudged against said W'm Den-
154 nison by reason of the retrial of said cause, or by reason of any order or judgment of the court in relation to costs therein, upon and after the order for a new trial.

JAMES THOMPSON.

Filed January 26, 1875.

J. B. SATTERLEE, *Clerk.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

The said defendant, William Dennison, now comes into court and denies each and every allegation of the plaintiff's petition.

And the said defendant in bar of any recovery against this defendant, as trustee of the bondholders, says that on the *the* first day of July, 1871, the said Davenport and S't Paul Railroad Company exe-
155 cuted to *to* John Edgar Thompson and W'm Dennison a deed of trust, conveying to them all the railroad *railroad* track, right of way, and all real and personal property then owned or thereafter to be owned by said company, to secure certain bonds therein named, of which over three millions of dollars has been issued, and now are owned by bona-fide holders, and were so owned when said judgment was recovered against this defendant on 22nd day of May, 1874, and said mortgage

was duly recorded in Delaware County on the 1st day of February, 1872.

And said Delaware Railroad Construction Company had constructive notice from that date, and actual notice on the day of its execution, on the 1st day of July, 1871.

And this defendant says that said Delaware Railroad Construction Company performed the work, furnished the materials, and makes the claim of lien against said company and said trustees, by reason of a written contract set out in the petition filed in said cause, to
156 which agreement reference is hereby made.

And by the said contract the said construction company agreed that the payment for the work done under said contract should be paid by the citizens of Delaware County. And at the time of said contract divers citizens of Delaware County had subscribed to the stock of said railroad company; and afterwards, to wit, on the first day of July, 1872, and after said mortgage to the said trustees had been recorded in Delaware County, the said Construction (?) agreed with the Davenport and S't Paul Railroad Company, in consideration of the reduction of the price of the contract two thousand dollars, to waive its rights to have said contract paid for by the citizens of Delaware County, and to take the said Davenport and S't Paul Railroad Company as payer.

And by reason of said premises the said railroad, or any part thereof, or the right of way thereof in Delaware County, *and* is not en-
157 titled to any lien whatever against this defendant.

Wherefore he prays judgment.

GRANT AND SMITH,
Att'ys for Dennison.

Filed Jan'y 26, 1875.

J. B. SATTERLEE, *Clerk.*

And on the said second day of the said January term, 1875, of said court, to wit, on the 26th day of January, 1875, as aforesaid, the following proceedings were had, done, and entered, and appear of record in said cause in the proper records of said court, to wit:

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard.
} No. 1141. Equity.

158 Now, on this 26th day of January, 1875, comes William Dennison, the surviving trustee for certain bondholders of the Davenport and S't Paul Railroad Company, who were defendants in the above-entitled cause, and files with the clerk of this court a motion for a new trial in this cause, on behalf of the said William Dennison, surviving trustee as aforesaid, and brings into court a bond for security for costs of retrial of said cause, as required by the statute in such cases made and provided, and offers to be filed the answer of the said surviving trustee, William Dennison. Whereupon, it appearing to the court that the service upon the said surviving trustee was by publication only, and that he and those whom he represents are entitled to a new trial under the law; and it further appearing to the court that the said surviving

trustee has furnished security for the costs of new trial herein satisfactory to the said plaintiff, it is ordered by the court that a new trial
159 in this cause be granted to the said surviving trustee, William Dennison, that the answer offered by the said defendant be filed, and that this cause stand continued to the next term of this court.

And afterwards, during the further progress of said cause in said court, on the 2nd day of February, A. D. 1875, at the regular January term, A. D. 1875, of said court, and on the 8th day of the said term, there was filed in the office of the clerk of said court a motion in words and figures following, to wit:

Motion to strike out answer of W'm Dennison, trustee.

In circuit court, Delaware county, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

The said plaintiff comes and moves the court to strike out the answer of William Dennison, trustee, *and* etc. The reason for this motion is that the answer of said William Dennison, trustee, etc., is not veri-
160 fied, although all previous pleadings in said suit are verified; and because of said defect in said answer, said plaintiff moves this court to strike from the files of the court.

J. M. BRAYTON,
Att'y for Plaintiff.

Filed Feb. 2, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, during the further progress of said cause in said court, on the 1st day of the regular May term, A. D. 1875, of said court, to wit, on the 17th day of May, 1875, the following proceedings were had, done, and entered of record in the proper records of said court, to wit:

THE DELAWARE R. R. CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

161 Now, on this 17th day of May, A. D. 1875, this cause comes on for hearing on motion of plaintiff to strike William Dennison's answer from the files, and after hearing the arguments of the counsel and the court being fully advised in the premises, it is ordered by the court that said answer be stricken from the files; whereupon plaintiff files a motion for default against said defendant William Dennison, for want of answer herein.

And afterwards, during the further progress of said cause in said court, on the 19th day of May, A. D. 1875, it being the 3d day of the

regular May term, 1875, of said court, the following proceedings were had, done, and entered of record, in the proper record of said court to wit:

THE DELAWARE R. R. CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson and William Dennison, trustees for certain
162 bondholders of said railroad, the Davenport Railroad Construction Company, and Lucius Howard.

No. 1141. Equity.

Now, on this 19th day of May, A. D. 1875, defendant William Dennison asks leave to file an amended answer, and leave is granted by the court to present an amended answer.

And further, on the said 19th day of May, A. D. 1875, it still being the 3d day of the regular May term, 1875, of said court, the defendant William Dennison files in the office of the clerk of said court his amended answer, in words and figures following, that is to say:

Amended answer.

In the circuit court of Delaware Co., Iowa.

THE DELAWARE R. R. CONSTRUCTION COMpany
vs.
THE D. AND S'T P. *P.* R. R. CO. ET ALS.

163 Said defendant William Dennison now comes into court, and for answer to the plaintiff's petition, states:

That as to the work done and materials furnished by the pl'ff to the D. and S't P. R. R. Co. he has not knowledge nor information sufficient to form a belief, and requires strict proof thereof; and the said defendant, in bar of any recovery against him as trustee for the bondholders of the D. and S't P. R. R. Co., says that on the first day of July, A. D. 1871, the said D. and S't P. R. R. Co. executed a mortgage to or deed of trust to John Edgar Thompson and William Dennison, conveying to them all the railroad, right of way, and property of every description then owned or thereafter to be owned by said company, to secure certain bonds therein named, of which over three millions of dollars have been issued and are now owned by bona-fide owners, and were so owned when said judgment was recorded against said defendant on the 22nd day of May, A. D. 1874, and said mortgage was duly recorded in the
164 office of the recorder of Delaware County, on the 7th day of Feb., 1872; that said Delaware R. R. Const. Co. had constructive notice from that day and actual notice on the day of the execution of said mortgage, to wit, on the first day of July, 1871.

And this defendant says that said Delaware R. R. Const. Co. performed the work, furnished the materials, and makes the claim of lien against said company and said trustees by reason of a written contract set out in the petition filed in said cause, to which agreement reference is hereby made.

And by the said contract the said construction company agreed that

the work done and materials furnished under said contract should be made by the citizens of Delaware County, and afterwards, to wit, on the first day of July, 1872, and after said mortage to the said trustees had been recorded in Delaware County, the said D. and S't P. R. R. Co. agreed with the said Delaware R. R. Cons. Co., in consideration
165 of the reduction of the price of the contract two thousand dollars, to waive its rights to have the work done under said contract to be paid for by the citizens of Delaware County, and to allow said Delaware R. R. Cons. Co. to look to the said D. and S't P. R. R. Co. as the payer.

And by reason of said premises the said Delaware R. R. Construction Company is not entitled to any lien upon said R. R., or any part thereof, as against this defendant and the bondholders he represents. Wherefore he prays judgment.

WILLIAM DENNISON,
By GRANT AND SMITH,
His Att'ys.

STATE OF IOWA,
Delaware County, ss:

I, L. M. Fisher, on oath, say that I am acting as attorney for William Dennison, trustee for the bondholders in said cause; that I am acquained with the facts upon which the foregoing answer is founded, and that the allegations therein made are true, as I verily believe.

L. M. FISHER.

166 Subscribed by L. M. Fisher, and by him sworn to in my presence, this 19 day of May, A. D. 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 19th, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the said 19th day of May, A. D. 1875, during the further progress of said cause in said court, it being on the third day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court a paper, in the words and figures following, to wit:

In the Circuit Court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
WILLIAM DENNISON, SURVIVING TRUSTEE.

Now comes Lewis H. Meyer, and moves to be substituted as a codefendant in the above-entitled cause, and states to the court:

167 1. That on the 1 day of July, A. D. 1871, there was executed and delivered by the Davenport and S't Paul Railroad Company to W'm Dennison, a citizen and resident of the State of Ohio, and John Edgar Thompson, a resident and a citizen of the State of Pennsylvania, a certain deed or indenture on the property, rights, and franchises of the said railroad company for the purpose of securing certain bonds issued by said company.

2. That since the delivery and execution of said indenture, to wit, on

the 22 day of May, A. D. 1874, John Edgar Thompson, one of the trustees of said mortgage, departed this life.

3. That on the same day aforesaid, to wit, on the first day of July, A. D. 1871, the said Davenport and S't Paul Railroad Company made, executed, and delivered to said John Edgar Thompson and William Dennison a certain other deed of trust by way of supplement; which provides, among other things—

168 "That in case any time hereafter the said trustee, or either of them, or any trustee hereinafter appointed, shall die or resign, or be removed as herein provided, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds."

4. That in accordance with said supplemental indenture, and after the death of said John Edgar Thompson, by an instrument in writing duly executed by a requisite number of such bondholders, your petitioner was, on the day of , duly appointed a trustee of the mortgage or deed of trust heretofore mentioned in place of said John Edgar Thompson, deceased.

Wherefore your petitioner prays he may be substituted as a codefendant in said suit.

LEWIS H. MEYER,
By GRANT AND SMITH,
His Att'ys.

Filed May 19, 1875.

J. B. SATTERLEE, *Clerk.*

169 And on the same day, to wit, on the 19th day of May, A. D. 1875, during the further progress of said cause in said court, and on the said 3rd day of the regular May term, 1875, of said court, a paper was filed with the clerk of said court in the words and figures following, that is to say:

Pete. to transfer case to U. S. Cir. Ct.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION CO.
vs.
LEWIS H. MEYER AND W'M DENNISON, trustees.

Now comes your petitioners, Lewis H. Meyer and W'm Dennison, trustees, and state:

That the Delaware Railroad Construction Company, and all persons who have come in as intervenors in the above-entitled cause, are citizens of the State of Iowa; that Lewis H. Meyer is a citizen of the State of New York, and William Dennison a citizen of the State of Ohio.

170 That they have reason to believe, and do believe, that from prejudice or local influence they will not be able to secure justice by reason of such prejudice or local influence.

That said cause can be fully and finally determined in the United States circuit court for the district of Iowa.

That the amount in controversy in said cause amounts to more than the sum of five hundred dollars, exclusive of costs, and they make and file in this court a bond with good and sufficient security for their enter-

ing in such circuit court, on the first day of its next session, a copy of the records in said suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that said suit shall be wrongfully or improperly transferred thereto, and also for the appearing and entering special bail in such suit, if special bail was originally requisite therein, and they pray of said court to accept said petition and bond and order the transfer the said cause to the said circuit court of the United States.

171 Filed May 19th, 1875.

J. B. SATTERLEE,
Clerk.

And afterwards, on the 20th day of May, A. D. 1875, during the further progress of said cause in said court, it being on the 4th day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court a paper in the words and figures following, that is to say:

In the circuit court of Delaware County, I'a.

Know all men by these presents that we, Lewis H. Meyer and W'm Dennison, principals, and John E. Henry and Charles Whittaker, as sureties, are held and firmly bound unto the Delaware Railroad Construction Company, and all other persons whom it may concern, in the penal sum of one thousand dollars, to which payment we bind ourselves and each of us by these presents. Given under our hands this
172 15th day of May, 1875.

The conditions of this obligation are these: The said Lewis H. Meyer and W'm Dennison have applied to the circuit court of said county to remove a certain cause pending in said court wherein the Delaware Railroad Construction Company are plaintiffs and the said Lewis H. Meyer, trustee, successor to John Edgar Thompson, and William Dennison, trustees, and many others are defendants, from the said cir. court to the circuit court of the United States for the district of Iowa:

Now, if said Meyer and Dennison shall enter in the said circuit court of the United States for the District of Iowa, on the first day of the next term thereof, a copy of the record of said suit, and shall pay all the costs that may accrue or be awarded by said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said circuit court in
173 said suit if special bail was originally required therein, then this obligation shall be void; otherwise in full force.

W'M DENNISON AND L. H. MEYER,
Trustees.

By GRANT AND SMITH, *Their Att'ys.*

C. WHITAKER,
JOHN E. HENRY,
Sureties.

Surety approved with this bond this day of May, A. D. 1875.

Judge of the Delaware Circuit Court.

I hereby certify that I am a resident and citizen of the State of Iowa, that I am worth double the amount herein intended to be secured be-

yond the amount of my debts, and have property liable to execution equal to the sum herein secured.

C. WHITAKER.

Subscribed by and sworn to by said C. Whitaker, before me, this 15th day of May, A. D. 1875

[SEAL.]

W. M. KAEISER,
Notary Public, Scott County, Iowa.

174 Filed May 20th, 1875.

J. B. SATTERLEE, *Clerk.*

And on the same day, to wit, on the 20th day of May, 1875, it being the 4th day of the regular May term, 1875, of said court, defendant William Dennison, trustee, filed in the office of the clerk of said court his affidavit and motion for continuance in words and figures following, viz:

Motion for continuance.

In circuit court, Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

Now comes William Dennison, trustee, etc., one of the defendants in the above-entitled cause, and moves the court for a continuance in the above-entitled cause upon the within affidavit, and asks the court until the next term of said court to file his answer herein.

WM. DENNISON,
By GRANT AND SMITH AND L. M. FISHER,
His Att'ys.

175 I, L. M. Fisher, on oath state that I am, as attoney for William Dennison, trustee for the bondholders of the Davenport and S't Paul Railroad Company in the case of the Delaware R. R. Const. Co. vs. The said D. and S't P. R. R. Co., that the failure to have the answer of the said Dennison in the said cause properly sworn to was an oversight upon the part of the attorneys of the said trustee and bondholders in said cause; that I have charge of said cause as to the said trustee in this court; that I was unable to be present upon the first day of this term and to make the proper appearance and answer in said cause; that the said W'm Dennison, as trustee, has a good defense to the action of the Delaware R. R. Const. Co. in this, that the said Delaware R. R. Con. Co. had actual notice of a mortgage from and after the first day of July, 1871, which said mortgage was executed upon all the property, of every description, of the said D. and S't P. R. R. Co.;

176 which said mortgage was executed to John Edgar Thompson and William Dennison, and that all work done and materials furnished constitute only a subsequent and inferior lien after said date to the said mortgage.

The said mortgage was recorded in the county of Delaware on the 7th day of February, A. D. 1872, and that from said date said Delaware R. R. Const. Co. had constructive notice of said mortgage, and that by far the larger portion of the said labor and materials alleged

to have been furnished to the Davenport and S't P. R. R. Co., were furnished subsequent to the execution and recording of said mortgage as aforesaid. That the said Delaware R. R. Const. Co. performed the work, furnished the materials, as makes the lien against said D. and S't P. R. R. Co. and said trustee, by reason of a written contract, set out in the petition filed in said cause, and by said contract the said Construction Company agreed that the payment for the work should be made by the citizens of Delaware County; and that at the time of said con-
177 tract divers citizens of said Delaware County had subscribed to the capital stock of said D. and S't P. R. R. Co.; and afterwards, to wit, on the 1st day of July, 1872, and after the recording of the said mortgage in Delaware County, the said Delaware R. R. Construction Company agreed with the Davenport and S't P. R. R. Co., in consideration of the reduction of the price of the contract of two thousand dollars, should have the work and materials furnished under said contract paid for by the citizens of Delaware County, and to take the said D. and S't P. R. R. Co. as the payer.

The said William Dennison, surviving trustee for the bondholders, resides in the city of Washington, and it would be impossible to communicate with him by mail in less than one week from this date. That this application is not made for delay, but in the utmost good faith, and for the purpose of furthering justice in said cause.

L. M. FISHER.

STATE OF IOWA,
Delaware County, ss:

178 Subscribed and sworn to by the said L. M. Fisher in my presence this 20th day of May, A. D. 1875.

[SEAL.] J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Deputy.*

Filed May 20th, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the same day, to wit, the 20th day of May, A. D. 1875, during the further progress of said cause in said court, and on the said 4th day of the regular May term, A. D. 1875, of said court, the following proceedings were had, done, and entered of record in the proper records of said court, to wit:

THE DELAWARE R. R. CONSTRUCTION COMPANY *vs.* THE DAVENPORT AND S'T PAUL RAILROAD Company and John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.	No. 1141. Equity.

179 Now on this 20th day of May, A. D. 1875, this cause coming on for hearing on the motion of plaintiff to strike from the files in this cause the amended answer of William Dennison, trustee, the same is submitted to the court upon arguments of counsel, and the court being fully advised in the premises, said motion is sustained.

Whereupon defendants, by their attorneys, file a motion for a continuance of this cause, and asks for time to file an amended answer.

Whereupon plaintiff files his objections to defendan'ts affidavit for continuance, alleging want of diligence on the part of said defendant, and that no excuse or reason for such want of diligence is shown. Objection to defendant's affidavit for continuance sustained, and motion for continuance overruled. Whereupon defendant William Dennison files his amended answer.

And on the same day, to wit, on the 20th day of May, 1875, it being still on the 4th day of the regular May term, 1875, of said court,
180 defendant, William Dennison, files his amended answer in said cause in words and figures following, viz:

STATE OF IOWA,
Delaware County, ss:

I, L. M. Fisher, being duly sworn, depose and say that I am one of the attorneys for W'm Dennison, trustee, etc., and defendant in the above-entitled cause.

That I have examined the records upon which the foregoing allegations are made. That I am personally acquainted with the facts alleged in said answer.

The said allegations, except as to actual notice, are based upon written instruments, recorded in this Delaware County, and on file in this cause. Which said instruments, on file in this cause, and in the recorder's office of said county, I have examined, and have personal knowledge of their contents.

All of which are true.

L. M. FISHER.

Subscribed and sworn to by said L. M. Fisher before me this 20th day of May, 1875.

181 [SEAL.]

J. B. SATTERLEE,
Clerk,
By I. N. SULLIVAN,
Deputy.

In the circuit court of Delaware Co., Iowa.

THE DELAWARE R. R. CONSTRUCTION CO.
vs.
THE D. AND ST. P. R. R. CO. ET AL.

Said defendant William Dennison now comes into court and for answer to the plaintiff's petition states:

That the said defendant, in bar of any recovery against him as trustees for the bondholders of the D. and St. P. R. R. Co., says: That on the 1st day of July, A. D. 1871, the said D. and St. P. R. R. Co. executed a mortgage or deed of trust to one John Edgar Thompson and William Dennison, conveying to them all the railroad right of way and property of every description then owned or thereafter to be owned by said
182 company, to secure certain bonds therein named, of which over three million dollars have been issued and are now held by bona fide owners, and were so owned when said judgment against the defendant the D. and St. P. R. R. Co. was recovered, on the 22d day of May, A. D. 1874, and said mortgage was duly recorded in the office of the recorder of Delaware County on the 7th day of February, 1872.

That said Delaware R. R. Con. Co. had constructive notice from that

day, and had actual notice thereof on the day of the execution of said mortgage, to wit, on the 1st day of July, A. D. 1871.

And this defendant says that the Delaware R. R. Const. Co. performed the work, furnished the material, and makes the claim of lien against said company and said trustee by reason of a written contract, set out in the petition filed in said cause, to which reference is hereby made.

And by the said contract the said construction company agreed
183 that the work done and materials furnished under said contract should be made by the citizens of Delaware County.

And afterwards, to wit, on the first day of July, A. D. 1872, and after said mortgage to said trustee had been recorded in Delaware County, the said D. and S't P. R. R. Co. agreed with said Delaware R. R. Const. Co., in consideration of the reduction of the price of the contract two thousand ($2,000), to waive its right to have the work done under said contract, to be paid for by the citizens of Delaware County, and to allow said Delaware R. R. Const. Co. to look to the said D. and S't P. R. R. Co. as the payee.

And by reason of said premises the said Delaware R. R. Const. Co. is not entitled to any lien upon said R. R. or any part thereof, as against this defendant and the bondholders he represents.

Wherefore he prays judgment with the costs of this suit.

WILLIAM DENNISON,
By GRANT AND SMITH AND L. M. FISHER,
His att'ys.

184 Filed May 20, 1875.

J. B. SATTERLEE, *Clk*,
By I. N. SULLIVAN, *Dep'ty.*

And afterwards, to wit, on the 21st day of May, A. D. 1875, during the further progress of said cause in said court, it being the 5th day, the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of the said court the following affidavit in words and figures following, to wit:

In the circuit court of Delaware County, Iowa.

DELAWARE RAILROAD CONSTRUCTION CO.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

In the matter of the petition of Lewis H. Meyer.

I, L. M. Fisher, on oath say that I am an attorney for Lewis H. Meyer, trustee for the bondholders of the Davenport and S't Paul Railroad
Company; that I know the facts upon which said petition is
185 based; and that the allegations therein made are true. That I have obtained this knowledge from the examination of the several mortgages of the D. and S't Paul Railroad Company in said petition mentioned, and also from an examination of certain correspondence of the said Meyer, wherein he alleged his appointment in the manner set forth in said petition.

That the said Meyer is the duly appointed trustee of the Davenport and St. Paul Railroad Company's said mortgage, and as the successor of John Edgar Thompson, dec., has, upon a proper showing, been

allowed to come in as a co-plaintiff in the U. S. circuit court for the district of Iowa, in a case wherein Moses De Wett Loomis is plaintiff, and the Davenport and St. Paul R. R. Company, among others, a defendant; which suit was brought for the foreclosure of the said mortgage, and that, as such trustee, said Meyer has filed a bill for the foreclosure of the aforesaid mortgage in said court.

And, further, that the death of John Edgar Thompson is a
186 matter of public notoriety and well known to all persons acquainted with public affairs.

L. M. FISHER.

Sworn to and subscribed before me, and in my presence, this 21st day of May, 1875, by the said L. M. Fisher.

[SEAL.] J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

NOTE.—This affidavit was not certified by the clerk at the date purported, and was passed to the judge, with the other papers in the cause, without the clerk's certificate; but, on the return of the papers with the decision of Judge Bagg, M'r Attorney Fisher claimed that he swore to said affidavit May 21st, 1875, before Deputy Clerk Sullivan, who, satisfied that such had been the case, at the request of said Fisher, certified as above.

Witness my hand and seal this 9th day of August, 1875.

[SEAL.] J. B. SATTERLEE, *Clerk.*

Filed May 21st, 1875.

J. B. SATTERLEE, *Clerk.*

187 And afterwards, on the same day, to wit, on the 21st day of May, A. D. 1875, during the further progress of this cause in said court, and on the said 5th day of the regular May term, A. D. 1875, there was filed in the office of the clerk of said court a paper in words and figures following, that is to say:

Objections to transfer to .

In circuit court, Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION C'Y
against
THE DAVENPORT AND S'T PAUL RAILROAD CO.
and others.

1. It is too late after one trial to remove the cause to the U. S. circuit court, and after one term has passed at which the cause could be tried, after a second trial has been allowed.

2nd. The application is made by motion and not by petition.

188 3. The security is not good and sufficient security for the purpose of removal.

4. It is too late after the cause has been reached and the trial has commenced.

J. M. BRAYTON,
Att'y for Pl'ff.

Filed May 21, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the same day, to wit, on the 21st day of May, A. D. 1875, during the further progress of this cause in said court, and on the said 5th day of the regular May term, 1875, there was filed in the office of the clerk of said court a paper in words and figures following, to wit:

Delaware circuit court, May term, 1875.

THE DELAWARE R. R. CONSTRUCTION *Construction*
vs.
THE DAVENPORT AND S'T PAUL RAILWAY Company and others.

189 Now comes W'm Dennison and prays leave to amend his answer filed in this cause, and to set up in bar of the recovery or judgment of the plaintiffs in this cause, amend by stating the following facts:

1st. That a judgment was recovered in this cause in this court on the 6th day of Feb., 1874; that said Thompson, deceased, and Dennison were named as defendants in said petition, and no judgment was rendered against them, nor were they served with process in any way.

2nd. That after said recovery of 6th Feb., 1874, an execution was issued against the defendants, served with process, the property sold, and execution returned satisfied prior to 22 May, 1874.

3. That after said judgment and said sale, and after said cause was tried, and *and (?)* the said plaintiffs made a newspaper publication against Thompson and Dennison without any pleadings whatever,
190 and on 22 May, 1874, took a judgment in this court, which barred their right to *to* redeem theproperty, on a judgment already rendered, and sold on it without any pleadings of any kind, and there was no petition before the court as against Thompson or Dennison, on which any procedings could be had or any judgments rendered, and the judgment against them on 22 May, 1874, on which a new trial is granted, is coram non judice, without any warrant of law, and utterly void and of no effect or validity, and this court could not then or now enforce it, and they pray it may be set aside.

GRANT AND FISHER,
For Dennison.

Sworn to and subscribed by James Grant, who swears that he is the attorney of the defendant and knows the facts in this amended answer to be true, by examining the records referred to.

JAMES GRANT.

191 Subscribed and sworn to before me and in my presence by the said James Grant this 22d day of May, 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 22d, 1875.

J. B. SATTERLEE, *Clerk.*

And on the same day, to wit, May 21st, A. D. 1875, and during the further progress of said cause in said court, and on the said 5th day of the regular May term, A. D. 1875, there was filed in the office of the clerk of said court a paper in words and figures following, that is to say:

Reply.

In circuit court, Delaware County.

THE DELAWARE RAILROAD CONSTRUCTION CO.
against
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

The plaintiff, for reply to the answer of William Dennison,
192 trustee, denies that said Davenport and S't Paul Railroad Co. made, executed, and delivered any valid mortgage of said railroad property; denies that said plaintiff ever took the *the* citizens of Delaware county as payer or payees of their said contract.

Plaintiff denies that it agreed that the work and materials furnished under said contract should be made by the citizens of Delaware county, and plaintiff says that the mortgage recorded as alleged in said answer was wholly void; that the authorized capital stock of said Davenport and S't Paul Railroad Company did not exceed the sum of three millions of dollars, and that the whole amount of capital stock of said railroad company subscribed was and is less than one million dollars; that said railroad company was never authorized or empowered to execute a mortgage for the sum of three millions, or for any sum exceeding two millions of dollars.

193 Wherefore plaintiff asks that the original judgment in this case be confirmed, and for costs of suit.

J. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA,
Delaware County, ss:

I, Ancil E. Martin, being duly sworn, say that I have read the foregoing reply, and know its contents; that I am secretary of plaintiff, and that the matters and things therein set forth are true as I verily believe.

ANCIL E. MARTIN.

Subscribed and sworn to before me this 21st day of May, 1875. Witness my hand and official seal the said date.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 21, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the 22nd day of May, A. D. 1875, and during the further progress of said cause in said court, it being on the 6th
194 day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court a paper in words and figures following, that is to say:

In the circuit court of Delaware County, Iowa, May term, 1875.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

Now on this 22 day of May, 1875, comes Lewis H. Meyer, successor to John Edgar Thompson, and W'm Dennison, surviving trustee of the

bondholders under the deed of trust or mortgage referred to in said cause, and show to the court that on January 26, 1875, said William Dennison gave security for costs, and filed a petition in this court to retry this cause, and this court at that term and time ordered a retrial of this cause and judgment as to W'm Dennison, and allowed his
195 answer to be filed, and on the day of the filing thereof ordered a continuance of this cause.

And on the third day of this term the said Dennison and Meyer filed a petition, with a bond, with good and sufficient security, according to the act of Congress, for the transfer of this cause to the circuit court of the United States for the district of Iowa, said Dennison being a citizen of Ohio and Meyer a citizen of New York; and this court having overruled said application to transfer said cause, and proceeding to the trial of the same, now said Dennison and Meyer and each of them protest against the trial of this cause, and ask of this court to accept said petition and bond and proceed no farther with the trial of this cause, and if any objection is made in this court to the sufficiency of the security for the transfer said Dennison and Meyer and each of them offer to give any further and additional security in that re-
196 spect, or to deposit with this court such sum of money as will be ample to answer all the costs and other duties required of them for the transfer of the same.

GRANT AND FISHER,
For the said Dennison and Meyer.

I, James Grant, state, on oath, that I am one of the attorneys of the said Meyer and Dennison, and that I know the facts set forth in this motion by reading and examining the records and papers in the cause, and that I am authorized to give all the security for costs in this cause, and have the money in my possession to deposit the same with the court if required.

JAMES GRANT.

Subscribed and sworn to before me and in my presence by the said James Grant this 22d day of May, 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 22, 1875.

J. B. SATTERLEE,
Clerk.

197 Be it further remembered that afterwards, to wit, on the 31st day of May, A. D. 1875, in the vacation of said court, his honor S. Bagg, judge of said court, filed with the clerk of said court his written findings and judgment said cause in words and figures following, to wit:

In the circuit court.

THE STATE OF IOWA,
Delaware County.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and W'm Dennison, trustee for certain bondholders.

This action was tried as to the railroad company upon an appearance and hearing, and a judgment rendered for the sum of $; as to

the defendant, William Dennison, trustee, a judgment was rendered by default, notice having been served by publication. At a subse-
198 quent term of said court the default was set aside as to Dennison, and a retrial ordered as to said trustee. After said setting aside of the default the said cause was by consent continued.

And now, at this May term of this court, on the first day thereof, the plaintiff moves that the answer of said defendant, Dennison, be stricken from the docket for want of verification. Motion sustained and leave granted to file amended answer. Amended answer filed and parties announce themselves ready for trial.

Whereupon the plaintiff offers in evidence the contract between the parties, after which defendant asked leave to file a motion and bond for change to U. S. circuit court. Application denied, as the motion should have been made at the last term of the court, and the court having commenced the trial, it was too late. Defendant *accepted* to the ruling, whereupon the court proceeded to hear the cause, after which
199 the def't, by James Grant, his att'y, moved the court to discontinue further proceedings in the cause and to transfer to U. S. circuit court, which was refused. Def't excepts, whereupon the court, upon hearing, find the equity of the case is with the plaintiff, and that the lien of said plaintiff is prior to the claim of defendants' trustee, and order that decree shall be entered up accordingly.

See decree.

S. BAGG,
Circuit J'dg.

Filed May 21, 1875.

J. B. SATTERLEE,
Clerk.

Whereupon the clerk of said court in accordance with the findings and judgment of his honor, Judge Bagg, aforesaid, and the orders and proceedings before had in the trial of said cause, made and entered of record in the proper records of said court an entry of judgment and decree in said cause in words and figures following, to wit:

200 THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

On this 21st day of May, A. D., 1875, this cause was called for hearing, when Lewis H. Meyer asks leave to be made a defendant in this case.

No sufficient evidence of his appointment as trustee being produced, his application is overruled.

Plaintiff introduces in evidence the contract described in petition. Defendant asks leave to file an amended petition and bond for removal to U. S. circuit court. Plaintiff objects that it is too late; should
201 have been made before; and cause now reached and on trial. Objection sustained by the court. Defendant excepts. Defendant offers bond on file.

Plaintiff files objection to application to transfer cause to U. S. circuit court. Shows that one surety on the bond is an attorney, and objects to him, and that the bond is not good or sufficient, and filed too late. Objection sustained.

Defendant asks for time to present a new bond. Plaintiff objects. Time refused by the court. Defendant excepts. With leave of court plaintiff files a reply. Defendant objects, and excepts to filing the reply.

Court adjourns to May 22.

On this May 22, 1875, defendant files a motion that the court proceed no further with the cause, but allow defendant to file a new bond, or deposit security for costs. Motion overruled. Defendant excepts, and asks leave to file an amendment to his answer. Leave is granted,
202 and the defendant, William Dennison, trustee, files an amendment to his former answer. Trial proceeds upon the issue made J. M. Brayton, esq., appearing for the plaintiff, and Grant and Fisher for William Dennison, trustee, e'c. After both parties had introduced their evidence and rested, and the cause submitted, by consent of parties in open court, it is agreed that the court may take the case under advisement, and that, upon the filing of his decision, although in vacation, judgment and decree shall be rendered and entered as of this May term of this court.

And the court finds the issues in favor of plaintiff, and files and renders his decision, that plaintiff's lien is paramount to that of defendants, and orders judgment in favor of said plaintiffs.

It is then ordered, and adjudged, and decreed, that the lien of said plaintiff is paramount to that of the defendant, William Den-
203 nison, e'c., and it is ordered, adjudged, and decreed, that the former decree and judgment of this court, rendered at the May term, A. D. 1874, be confirmed, and that the plaintiff's claim for a mechanics' lien, as prayed in his petition, be established as against the said defendants, upon the property described in the decree in this suit, at the February term of this court, 1874, and as therein established against the Davenport and St. Paul Railroad Company; and that the defendants be forever barred and foreclosed of and from all right of redemption of, in or to said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramont to any and all claims and rights of said defendant to the same, or any part thereof; and that the defendant, William Dennison, trustee, e'c., pay the costs of the retrial of this suit.

Thus decreed this 22 day of May, A. D. 1875.

And afterwards, on the 5th day of July, A. D. 1875, there was
204 filed in the office of the clerk of said court a "notice of appeal," in words and figures following, to wit;

Circuit Court of Delaware County, Iowa.

THE DELAWARE R. R. CONSTRUCTION COMPANY *v's* THE DAVENPORT AND S'T PAUL RAILROAD COMPANY and others. } No. 1141.

To the above-named plaintiff, or J. M. Brayton, its attorney, and J. B. Satterlee, clerk of said court:

You are hereby notified that William Dennison, trustee, a defendant in said cause, has appealed from the judgment and decree of the said

circuit court of Delaware County, rendered in favor of the said plaintiff on the 22 day of May, A. D. 1875, to the supreme court of the State of Iowa, and that said appeal will come on for hearing and trial at the regular term of said supreme court, to be held at Dubuque, Iowa,
205 commencing on the third (3) Monday in October, A. D. 1875.

GRANT AND SMITH AND
L. M. FISHER,
Att'ys for Def'ts.

Due and legal service of the within and foregoing notice accepted this 30 day of June, A. D. 1875.

J. B. SATTERLEE,
Clerk Circuit Court.

I hereby certify and return that the within notice came to hand for service June 30th, 1875, and that on the 3rd day of July, 1875, I served the same on J. M. Brayton, att'y for Delaware Rail Road Construction Company, by delivering to him personally a true copy thereof; he at the same time waived reading of this original.

Done at Delhi, Delaware County, Iowa.

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Fees: Service, 50; copy, 20; mileage, 10—$0.80.

Filed July 5, 1875.

J. B. SATTERLEE,
Clerk.

206 And afterwards, on the 21st day of July, 1875, there was filed in the office of the clerk of said court a stipulation or admission of facts in evidence in said cause in words and figures following, to wit:

It is admitted by counsel for plaintiff in open court that the first amendment to the articles of incorporation of the Davenport and S't Paul R. R. Company, changing the principal place of business from Delhi to Davenport, Iowa, was recorded with the recorder of Scott County, Iowa, and with the secretary of state, prior to the execution of the mortgages to Dennison and Thompson, trustees.

And it is also admitted that the sixth amendment to said articles of incorporation, changing the amount of capital stock of said company, was recorded with the recorder of Scott County, Iowa, on the 2nd day of December, 1871, and with the secretary of state of Iowa on the 19th day of December, 1871, but no amendment to any of the articles
207 of incorporation was recorded in the office of the recorder of Delaware County, Iowa.

J. M. BRAYTON,
For Pl'ff, the Del. Railroad Construction Co.

Filed Jul. 21, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, to wit, on the 24 day of August, 1875, in the vacation of said court, there was filed in the office of the clerk of said court a paper in words and figures following, that is to say:

STATE OF IOWA,
Delaware County, ss:

I hereby certify and return that the annexed motion came to hand for service on the 24th day of August, A. D. 1875, and that on the same

day I served the same on J. M. Brayton, att'y for the Delaware Railroad Construction Company, by delivering to him personally a true copy thereof; he at the same time waived reading of the original.

208 Done in Delhi township, Delaware County, Iowa.

ABNER DURHAM,
Sheriff Delaware County, Iowa.

Fees: Service, 50; mileage, 10; copy, 1.40—$2.00.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND ST. PAUL RAILROAD Company and others.

Now comes William Dennison and moves the court for a correction of the record and decree in said cause, and for a stay of judgment therein, and for cause thereof states:

That said judgment and decree do not state correctly the proceedings in said cause.

209 That on the calling of this cause on the 21st day of May, 1875, the petition of Lewis H. Meyer, asking to be made a co defendant, was immediately brought to the attention of the court for its consideration; that as soon as the counsel for this defendant could be heard, after the refusal of the court to grant the application made in said petition, the said defendant asked leave to amend his petition and bond for removal of cause to United States circuit court, so as to make said petition and bond comply with the said ruling of the court.

That prior to this time, and on the 19th day of May, 1875, the said petition and bond for the removal of said cause had been placed on file with the clerk of this court; that at the time of the refusal of the court to grant the application of Meyer as aforesaid, and at the time of the offering by plaintiff of the contract in said decree named in evidence, the trial of this cause on its merits had not begun.

210 That the defendants' petition and bond being on file were entitled to the consideration of the court previous to the trial of said cause on its merits; that at that time said contract could not be received in evidence; that the offering of the same at that time should not appear on the record.

That the defendant, immediately upon the overruling of his application for leave to amend said petition and bond, called up for hearing his application upon the petition and bond then *then* filed for a transfer of said cause to the United States circuit court.

That upon the consideration by the court the said petition and bond, the said court held that the petition and bond had been filed too late; that said petition and bond should have been filed at the last term, and that the surety on said bond was not sufficient, and the bond was void, one of the sureties being an attorney at law; that the trial of

211 said cause on its merits did not begin until the overruling of defendants' application for further time and leave to file new bond therein.

That the facts aforesaid do not sufficiently appear by the said record and decree; that this correction herein asked for is material to the rights of this defendant, and this motion is not made for delay.

And this defendant therefore moves the court to amend and correct

the said decree, so that beginning with the application of *of* Lewis H. Meyer to be made codefendant in said cause it may be read as follows, to wit:

"On the 21st day of May, 1875, this cause coming on to be heard, Lewis H. Meyer, through his attorneys, Grant and Smith and L. M. Fisher, called up for hearing his petition to be made a codefendant in said cause.

The court then overruled the application therein made for want
212 of sufficient evidence of the appointment of said Meyer as trustee, to which ruling defendant and Meyer excepted. Defendant then asks leave to amend his petition and bond for transfer of this cause to the United States circuit court. Pl'ff objects; application too late and cause now reached for trial. Objection sustained and defendant excepts. Defendant asks court to transfer this cause to the circuit court of the United States for the district of Iowa on the petition and bond already filed therein. Plaintiff excepts in writing, that application too late, and bond insufficient, and that one surety is an attorney. Objection as to bond and surety sustained and application held too late. Defendant excepts to overruling application as too late, and asks leave to present new bond and further time for this purpose. Application refused and def't excepts."

And as to so much of the decree as follows the refusal of the
213 application to file new bond, defendant makes no exception; and the defendant further moves the court that judgment and proceedings be stayed in said cause until such correction as herein asked for of said record and decree may be made.

GRANT AND SMITH AND
L. M. FISHER,
Att'ys for Dennison and (?).

I, L. M. Fisher, on oath, say that I was the attorney for William Dennison and Lewis H. Meyer in the trial of the above-entitled cause as to said Dennison; that I know the allegations in the foregoing motion, and the same are true.

L. M. FISHER.

Subscribed and sworn to before me and in my presence this the 18th day of August, 1875, by the said L. M. Fisher.

[SEAL.] J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

214 STATE OF IOWA, *Scott County, ss:*

I, L. M. Fisher, being duly sworn, depose and say that I served the within motion on J. M. Brayton, attorney for the Delaware R. R. Construction Company, personally, by reading the said motion to him and delivering him a copy thereof, in the town of Delhi and State of Iowa, on the 18th day of August, 1875.

L. M. FISHER.

Subscribed and sworn to before me and in my presence by the said L. M. Fisher this 19th day of August, 1875.

[SEAL.] W. M. KAISER,
Notary Public, Scott Co., Iowa.

Motion granted in this, that no execution issue on the judgment and decree entered in the cause until after hearing this motion to correct

decree. If execution has been issued clerk will recall same. Time of hearing the motion third day of the next term of court.

S. BAGG, *Judge.*

215 AUG. 21, 1875.

Filed Aug. 24, 1875.

J. B. SATTERLEE, *Clerk.*

Bill of costs.

G. B. Beveridge, clerk.

1874.				
Jan. 15.	To filing and docketing	$1	50	Rec't filed.
" "	By J. M. Brayton (receipt filed)	$1	50	
" "	To aff't on petition		25	
" "	To aff't		25	
" "	To aff't on reply		25	
" "	To order and continuance		70	
" "	To copies		50	
" "	To trial to court	1	50	
" "	To judgment and decree	1	50	
" "	To taxing costs and satisfaction		75	
Feb. 17.	To execution and return	1	00	
April 6.	To aff't on aff't for pub'n		25	
" 7.	To aff't on sup't petition		25	
" "	To certificate on sup't petition		25	
May 4.	By A. Dunham, sheriff, for clerk	6	40	
" 5.	To aff't on aff't for pub'n		25	
" "	To trial to court	1	50	
" "	To decree		75	

J. B. Satterlee, clerk.

216	1875.			
	Jan. . To 2 orders and bond for costs and costs,	$1	25	
May 3.	To copy for def't		40	
" 3.	To 5 affidavits	1	25	
" "	To 8 orders	2	00	
" 2.	To trial to court	1	50	
" "	To judgment and decree	1	50	
" "	To 4 affidavits	1	00	
" "	To taxing costs		50	
" "	Satisfaction		25	
" "	Copy decree for defendant		50	
" "	Transcript 375 fol	34	50	
" "	Certificate to transcript		50	
" "	Costs of transmission		75	
" "	By Grant and Smith	35	75	
	For extra work on manuscript	3	70	

Sheriff's and others' fees.

1874.				
Jan. 26.	A. Dunham on notice	$1	30	
" "	A. Dunham on plff's sub	2	50	
28.	Henry Harger, referee	20	00	
Feb. 6.	J. M. Brayton, copies pet'n	15	00	Rec't filed.
" "	J. M. Brayton, copies reply		80	Rec't filed.

May	4.	By sheriff's for Harger and Dunham	23 80	
	May	5. J. B. Swinburne, pub. fee	16 85	
217	May	18. Leonard and Giese on notice	1 20	
	"	" A. Dunham on notice	2 00	
"	"	A. Dunham on sale paid by pl'ff	298 43	
1875.				
May	21.	Beveridge and Dunham on pl'ff's subpœna.	1 35	
"	"	A. Dunham on def'ts' subpœna	50	
"	"	A. Dunham on def'ts' subpœna	50	
"	"	A. Dunham on def'ts' subpœna	50	
July	3.	A. Dunham on notice of appeal	80	
1874.				
Jan.	7.	E. Baldwin, witness pl'ff, 5, 90	15 25	
		Henry Harger, witness def't, 3, 1	3 85	
"	"	F. B. Doolitte, witness def't, 5, 1	6 35	Rec't filed.
"	"	G. B. Beveridge, witness def't, 1	1 25	
"	"	A. E. Martin, witness def't, 5, 1	6 35	Rec't filed.
"	"	R. Eddy, witness def't, 5, 1	6 35	Rec't filed.
	"	" C. F. Flemming, witness def't, 5, 1	6 35	Rec't filed.
218	Jan.	7. R. Boon, witness def't, 5, 4	6 65	Rec't filed.
	"	" W. L. Richard, witness def't, 7, 46	13 35	
Feb.	14.	F. B. Doolittle, wit. for referee, 3, 1	3 85	Rec't filed.
"	"	A. E. Martin, witness for referee def't, 3, 1	3 85	Rec't filed.
"	"	R. Eddy, wit. for referee def't, 1, 1	1 35	Rec't filed.
May	4.	By sheriff on ex. for witness, not receipted	33 70	
1875.				
May	7.	H. C. Jackson, witness def't, 2, 1	2 60	
"	"	A. E. Martin, witness def't, 2, 1	2 60	
"	"	F. B. Doolittle, witness def't, 2, 1	2 60	
"	"	Henry Harger, witness def't, 1, 1	1 35	

STATE OF IOWA,
Delaware County, ss:

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the entries of record in the action in which the same are entitled, and of the following pleadings and papers filed in said cause, to wit, the petition, amended petition, original notice,
219 with the sheriff's return therewith, the answer of the Davenport and S't Paul R. R. Co., reply, report of referee, Henry Harger, affi. for publication (non-residence), supplemental petition, affidavit of publisher of original notice, with copy of notice attached, execution and return, original notice and return, motion for new trial as to William Dennison, trustee, security for costs of retrial as to William Dennison, trustee, answer of William Dennison, motion to strike answer of William Dennison, amended answer of William Dennison, application of Lewis H. Meyer to be made codefendant, petition to transfer cause to the U. S. circuit court, bond to transfer cause to U. S. court, motion for continuance, amended answer of William Dennison, affidavit of L. M. Fisher as to Meyer being trustee, objection to transfer of cause, amendment to answer of William Dennison, affidavit of James Grant, findings of court, notice of appeal with return of service, admission of
220 plaintiff's attorneys, J. M. Brayton and Martin, for correction of record and record of stay of judgment, all as full and complete as the same remain on file and of record in my office, the same

being all the matters required to be certified by the parties to said cause.

I further certify that the fee bill hereto attached, and made a part of this record, as required by law, is full, true, and complete, as the same appears of record in my office. I further certify that the copies hereto attached, marked, respectively, Exhibits A, B, and C, are, Exhibit A, the transcript copy of the minutes of the evidence in said cause as certified thereon by the reportor of said court. Exhibit B is a full, true, and complete copy of the record of the articles of incorporation of the Davenport and S't Paul Railroad Company, with the amendments thereto introduced in evidence on the trial of said cause, as shown by a careful comparison of said copy with the certified record from
221 the office of the secretary of state of Iowa. Exhibit C is a full, true, complete, and compared copy of the mortgage made by the Davenport and S't Paul R. R. Co. to William Dennison et. al., trustee, as will further appear by the certificate of the recorder of said county thereto attached; and that said Exhibits A, B, and C, with the contract attached by copy to the petition of plaintiff, includes all the evidence introduced on the trial of said cause, to the best of my knowledge.

And I further certify that the affidavit of L. M. Fisher, appearing above, filed in my office on the 21st day of May, 1875, as to the fact of Lewis H. Meyer being the successor of John Edgar Thompson as trustee, did not, when submitted to his honor Judge Bagg at the close of the the trial of said cause, appear sworn to, but was signed by said Fisher; that on the return of the papers with the decision of Judge Bagg, M'r Fisher claimed that he swore to said affidavit on the date of its
222 filing, before the deputy clerk, who believing such to be the fact, from his own recollection certified to the affidavit as it now appears of record, and I certify the facts in relation to the same, in justice to all parties in interest as to the judge who passed upon the said affi', not as it now appears, but as not appearing sworn to.

Given under my hand and the seal of said court hereto attached this 26th day of August, 1875.

[SEAL.]

J. B. SATTERLEE,
Clerk Circuit Court Delaware County, Iowa.

EXHIBIT A.

In circuit court, May term, 1875.

STATE OF IOWA,
Delaware County, ss:

DELAWARE R. R. CONSTRUCTION CO.
vs.
D. AND S'T P. R. R. CO. ET AL.

Testimony taken on trial of the above entitled cause.

Plaintiff offers contract in evidence.
223 Plaintiff rests.

H. C. Jackson sworn on the part of defendant.

Direct examination.

1. Are you the recorder of Delaware County?
A. Yes, sir.

2. You have the records in your possession?
A. Yes, sir.
3. Have you, in open court, the record of the mortgage of the Davenport and S't Paul Railroad Company to William Dennison and John Edgar Thompson, trustees—the first mortgage?
(Plaintiff objects on the ground that the mortgage is the best evidence. Objection overruled and plaintiff excepts.)
(Defendant reads record in evidence, book B, page 473 of the records of Delaware County, dated July 1st, 1871.)
224 4. Was there another mortgage subsequent to this?
A. Yes, sir.
5. Show to the court the record of that.
A. That is the supplemental mortgage.
6. State whether, at the time of the discharge of the first mortgage, this second mortgage was not made. Wasn't it made at *at* the same time of the release of the first mortgage; wasn' the second mortgage—
A. I don't know. I have not looked up the date.
7. When was the first mortgage recorded?
A. The 25th of March, 1872.
8. No; that is the second mortgage.
225 A. The first mortgage recorded the 7th of February, 1872.
9. When was it discharged?
A. The 24th of August, 1872.
10. When was the supplemental mortgage executed?
A. the 1st day of March, 1872.
11. When was it recorded?
A. The 25th of March, 1872.
12. When was that discharged?
A. The release on the margin refers to some other page of the record and shows that the release discharges both mortgages August, 1872.
13. Was there any other mortgage executed subsequently to that?
A. There was another supplemental mortgage of the same date of the first mortgage.
226 14. When was that recorded?
A. The 28th of March, 1872.
15. Was that discharged?
A. It was.
16. When was that discharged?
A. The same time that release discharges these three mortgages. There was another mortgage the 1st of July, 1871.
17. When was that recorded?
A. The 4th of June, 1872, page 510, book B.
18. Was that ever released?
A. The record does not show a release.

F. B. DOOLITTLE sworn on the part of the defendant.

Direct examination:
227 1. Where do you live?
A. In Delhi, Iowa.
2. What position did you occupy in connection with the Delaware Railway Construction Company in 1870, 1871, and 1872?
A. I think I was treasurer at that time.
3. During what years did you hold that office; at the time of the entering of the Delaware Railway Construction Company into a contract

with the Delaware Railway Company to build a road through Delaware County?

I think I did. If I was not then treasurer, I was soon after the contract was made.

4. Did you ever hear, in 1871, anything about a mortgage executed by the Davenport and S't Paul Railroad Company?

228 A. I have heard talk about mortgages given by the company at different times, and different mortgages, and if it is a fact that the mortgages were then executed, I presume I heard of it.

5. How early do you suppose you heard of it in the year 1871?

A. Well, I really can't tell; but probably the time it was exec'ted.

6. About July?

A. I *yon't* know that even; but I know this fact, that whenever the mortgage was executed, I, at the time or soon after, had knowledge of it, because I was mixed up with the railroad; but as to the nature of them or what they were I, perhaps, diden't have the details.

7. Were subscriptions made to the stock of the Davenport and S't Paul R. R. Co. through this county?

A. Yes, sir.

229 8. Do you know how large an amount?

A. In the neighborhood of a hundred thousand dollars, I think. My recollection is, in the neighborhood of a hundred thousand.

Cross-examination:

X 1. What was it you said you heard about the mortgage?

A. I said that when the mortgages were executed I probably had some knowledge of it at the time, or soon after; but I have no distinct, definite recollection of any particular mortgage, or the details of any of the mortgages. My information was general information, obtained from general talk with the railroad company.

X 2. Did you ever see the mortgage?

A. I don't know that I ever did.

230 X 3. To come right down to the matter, do you know that there was any mortgage executed, of your own personal knowledge, anyway?

A. No, not of my own knowledge; only from a general talk with the railroad men generally. I had a general information.

X 4. You have it simply from general rumor?

A. Yes. I may have had actual knowledge. If I had I have forgotten. I don't think I had, however.

X 5. It was rumored that there was a mortgage?

A. Yes, sir.

X 6. You never saw W'm Dennison, Edgar Thompson, or any of the mortgagees?

A. I have seen Edgar Thompson.

231 X 7. Did you ever talk with him about this mortgage?

A. No, sir.

X 8. Did he ever give you any notice of this mortgage?

A. No, sir.

Redirect ex.:

9. Was not this mortgage known by each of the other officers?

A. I don't know. I think it was a general rumor.

10. It was generally talked along the road?

A. I think it was.

11. And so with all these mortgages subsequent?

A. They were generally talked about.

Recross ex.:

X 9. When did the plaintiff in this case, the Delaware Rail-
232 road Construction Company, when did they commence work?

A. They commenced work, I think, in September, 1870.

X 10. Was it under that contract (showing witness a contract)?

A. Yes, sir; it was under this contract.

X 11. Did they complete the work of grading and furnishing the road through this county with that company under that contract?

A. Yes, sir.

X 12. Was it accepted by the railroad company?

A. It was.

X 13. Do you remember when it was completed?

A. My recollection now is that it was in September, or the early
233 part of October, 1872. That is my present recollection. I could tell by dates to refresh my memory; but that is my recollection.

A. E. MARTIN sworn on the part of the defendant.

Direct e.:

1. What is your name?

A. A. E. Martin.

2. Where do you live?

A. In Delhi, Delaware County.

3. What position did you occupy in connection with the Delaware Construction Company in the year 1870, 1871, and 1872, at any time during that time?

A. I think in 1870 I occupied no position in that company. In 1871 I was secretary.

4. What time in 1871 did you come into that office?

234 A. If my recollection serves me right, our election was the last Satur' in the month of December, 1870, which I think was on the 26th day.

5. Did you hear anything about the mortgages executed by the D. and S't P. R. R. Co. in 1871?

A. Yes, sir; I think I did.

6. Tell us what you heard about it.

A. I think somebody told me that there had been such a thing issued. A mortgage placed upon the road.

7. Do you know how early in 1871?

A. No, sir. I couldn't tell you, and it might not have been until 1872 that I heard it. I couldn't say positively as to that.

8. But you think it was in 1871?

A. Well, I can't say; it was in 1871 or 1872.

235 9. Were there any subscriptions made to the Delaware and S't Paul R. R. Co.?

A. Yes, sir.

11. What amount?

A. My impression is that it fell something short of a hundred thousand dollars, or it might have went over a hundred thousand dollars. My impression is about a hundred thousand dollars. I don't know whether it was over or below that.

12. Did you hear of other mortgages after the execution of this mortgage in 1871?

A. Well, my impresssion is now that I never have heard of but two mortgages.

13. When was the last one you heard of?

A. I can't tell that. I don't think I know anything about the
236 last one until 1873. It might have been earlier than that, but I don't know.

Cross-ex.:

X 1. Do you know who you heard anything about that mortgage from?

A. No, sir.

X 2. Was it anything besides general rumor?

A. No, sir.

Redirect ex.:

14. These mortgages were generally talked about, weren't they?

A. Yes, sir.

DOOLITTLE recalled on the part of plaintiff.

Direct ex.:

12. Do you remember when the iron was laid on the road in this county?

A. It was principally in the fall of 1872, summer and fall. It was
237 principally in the year 1872, perhaps all. I wouldn't say positively.

13. Do you remember the time when they commenced laying the track from below Hopkinton up; through the winter it was some distance below the village of Hopkinton. About how far in this county had it been laid at the commencement of 1872?

A. I think in February or March it was laid two or three miles.

14. How long after that before they commenced again laying iron?

A. I think they didn't commence until about harvest time, or perhaps after harvest, when they left off.

15. About what month?

A. I should say in the month or August.

Cross ex.:

X 14. When did you say the iron was laid through Delaware Co.?

238 A. I think in Feb. and March, 1872, it was laid from the southern line of the county up about three miles this way, and then there was no more laid. My recollection is until August, 1872. It may have been the last of July, but I should think August.

X 15. How far was it laid up to June?

A. About that three miles I spoke of. It was laid in February or March, 1872.

X 16. How much was laid in April or May?

A. None.

X 17. When again did you begin to lay iron?

A. I think it was in August they commenced afterward. I know they continued, and they reached here. My recollection is they reached here some time in September and then continued right on through.

X 18. In August they were how far?

239 A. When they commenced in August, they were about three miles in this county.

X 19. And they had that laid in March, 1872?

A. Yes, sir.

X 20. When did they reach the northern line?

A. I think it was some time in the fall. I don't remember just how late. I think they past here the last of September, or some time in September were passed here. They finished late in the fall of 1872.

X 21. How late in the fall?

A. I wouldn't pretend to give the date; but my recollection is, judging from the season, the weather, and the circumstances of finishing up and furnishing the ties, my recollection is it got to be fall weather, say in the last of October. It may have been the first of October
240 when they passed out of this place. No, it couldn't have been that.

X 22. How far had they laid the iron upon the first of September?

A. Well, I can't tell you. It is possible they didn't commence down below Hopkinton until near the first of September.

X 23. Your impression is they began before?

A. Yes, sir; the last of August, or the first of August, or they may have commenced along the last of July, and worked along and got up here towards the last of September, and then continued right along, but I think the iron was all laid in this county in 1872. That is my recollection.

HENRY HARGER sworn for def't.

Direct examination:

1. What office did you hold in this county from the year 1870?
241 Did you ever hold the office of recorder in this county?

A. Yes, sir.

2. State when.

A. From 1867 to 1875. The first of January, 1875.

3. What book is that you have in your hand?

A. This is the record of the articles of incorporation.

4. It contains the articles of incorporation filed in this county?

A. Yes, sir; up to 1868. August, 1868.

5. Does that contain a copy of the articles of incorporation of the Davenport and St. Paul R. R. Co.?

A. It does.

(Plaintiff offers articles of incorporation in evidence.)

6. After these articles of incorporation, were there any other
242 articles of incorporation, or any change filed in your office whilst you was recorder?

A. I think not; my attention was called to it, I think, the last day I was in the office, and I found none.

Cross-examination:

X 1. You state that is the record of articles of incorporation of the D. and St. P. R. R. Co.?

A. Yes, sir.

X 2. Also of the articles of incorporation of the Delaware Construction Co.?

A. I think they are in the same book.

X 3. When were the articles of the Delaware Railway Co. filed?

A. I couldn't tell without looking at them. I think some time in 1868.

X 4. When were the articles of this Delaware Construction Company filed?

243 A. Some time after that. I couldn't tell without referring to the book.

DOOLITTLE recalled.

16. You are now a director in the Davenport and St. Paul R. R. Co.?

A. Yes, sir.

17. Do you know how much stock was subscribed to that company
A. I can't tell.
18. Do you not know it to be less than a million dollars?
A. I do.

The trial of the case was here continued until Saturday morning, when the following further testimony was taken:

F. B. DOOLITTLE recalled by defendant.

Direct examination:

19. Are you a member of one of the original corporators of the Davenport and St. Paul R. R. Company?
A. Yes, sir.
244 20. You are the person named in these articles of incorporation?
A. Well, I was one of the first incorporators.
21. You are that Doolittle?
A. Yes, sir.
22. Were you a director in that company?
A. I was.
23. At the time this contract was made with the Delaware R. R. Construction Company?
A. I think I was at that time. There was one year that I was not, but I think I was at that time.
24. Do you remember what year you was not?
A. No, I don't; but my recollection is that it was in 1872 that I was not.
25. Were you a director in 1870?
245 A. I think it was.
26. Were you in 1871?
A. I think not.
27. What office did you hold in connection with the company in 1871; with the railroad company?
A. I was assistant treasurer and right-of-way agent for this county.
28. What office did you hold in the Delaware Construction Company at that time in 1871?
A. I was treasurer of that company.
29. May I ask you if you collected the subscriptions for the stock of the Davenport and S't Paul R. R. Co. in this county, or any part of it?
A. I did, sir.
30. What did you do with the proceeds of the subscriptions that
246 you collected?
A. I did various things with them; paid for right of ways; paid the engineers and incidental expenses; and paid the Delaware Railway Construction Co.
31. You paid them?
A. Yes, sir.
32. Did you continue to pay them until the change that was made in the contract in 1872?
A. Yes, sir; and after, I think.

Cross-ex.:

X 24. You say you collected certain subscriptions; subscriptions for what?
A. Subscriptions for the stock of the Davenport and S't Paul R. R. Co.
X 25. In what capacity did you collect these subscriptions, as what officer?

247 A. As assistant treasurer of the Davenport and S't Paul R. R. Co.

X 26. Under whose direction did you collect them?

A. Under the direction of M'r Price and the executive committee. M'r Price was president of the road.

X 27. Under whose direction did you disburse them?

A. Under his and the executive committee. M'r Price was the president of the road.

X. 28. The counsel mention a certain change of contract. State if at the time there was any change in the plan of the estimates of the road through this county from the time the contract was made up to the time that change was made, if there was any change made; and, if so, what.

A. I don't know that I understand you. Change in regard to work?

248 X 29. I mean any change made in relation to the work by the railroad company.

A. There was a change made after we took the contract, and after the work had commenced.

X 30. What was that change?

A. Well, it was a change in the plan of building. The originals for building eight-foot banks, and the cuts I don't recollect, they were very narrow; and it was changed from that, and the banks were made twelve f't and the cuts sixteen, perhaps; so it increased the amount of work very materially.

X 31. About what per cent. should you say this increase was in the plan?

A. I couldn't give an intelligent opinion, hardly.

X 32. Was it a 1–10, 1–4, 1–5, 2–3, double or thribble? State as near as you can.

249 A. I would say it would add to the work $\frac{1}{3}$, but it is without making any figures or investigating it.

Redirect:

33. Is this the contract you speak of, sir? (Showing witness contract.)

A. I think so.

34. Can you point anywhere on that contract where it is specified that the bank is to be eight feet?

A. No, sir; it was never put into the contract. I think not.

35. The work was to be done according to this contract?

A. Yes, sir; the engineers to give directions about that, but Price fixed upon the dimensions of the bank, and to change the cuts determined that the bank should be made eight feet as the Maquoqueta branch was built. But it was afterwards concluded that they

250 were too narrow; it would wash down and make the banks so narrow that it was not safe, and they were made wider.

36. When you speak of this change you don't mean that there was any new contract made about it?

A. Oh, no.

37. That was done under this contract by the engineer, was it not?

A. Yes, sir.

38. You say you paid this money by the order of Price?

A. Yes, sir; and the executive committee of the D. and S't P. R. R. Co.

Defendant offers in evidence the articles of incorporation.

It is admitted by the parties to this suit that the first amendment to

the articles of incorporation changing their place of business was
251 recorded in the Scott County records, and not in the recorder's office in Delaware County.

The foregoing is a transcript of the testimony taken in the above-entitled case as made by me.

Dated July 17th, 1875.

E. V. HAYDEN,
Reporter Circuit Court, 9th Jud'l Dist. Pa.

EXHIBIT B.

Articles of incorporation of the Davenport and S't Paul Railroad Company, together with amendments.

ARTICLE I. The name of this corporation shall be the Davenport and S't Paul Railroad Company.

ARTICLE II. The elective officers of the corporation shall consist of a president, vice-president, and treasurer, and a board of directors, consisting of eleven members, and the president and vice-president shall be ex-officio members of said board, all of whom shall be elected on
252 the 27th day of May, 1868, and shall hold their offices until the first annual election, and until their successors are elected and qualified. Seven members of the board shall constitute a quorum.

ARTICLE III. The regular annual meetings of the stockholders for the election of officers shall be held at the office of the company on Wednesday after the first Monday in January in each year.

ARTICLE IV. All of the elective officers after the first election shall be actual stockholders of the corporation.

ARTICLE V. The office and principal place of business of the company shall be at Delhi, Delaware County, Iowa. The board of directors may at any time change the place of business by a two-thirds vote and designate the location thereof.

ARTICLE VI. The general nature of the business of this corporation shall be the constructing and operating of a railroad, commencing
253 at Davenport, Iowa, thence via Canton, Cascade, Sand Spring, Hopkinton, Delhi, Delaware, Strawberry Point, Brush Creek, and Fayette, to S't Paul, Minnesota.

ARTICLE VII. The capital stock of the corporation shall be three millions of dollars, with the privilege of increasing it to five millions, to be divided into shares of one hundred dollars each, to be subscribed for and paid in as hereinafter provided.

ARTICLE VIII. One per cent. of the subscription for stock shall be paid at the time of subscribing, the balance in installments at the call of the directors, which shall not exceed four per cent. in thirty days after subscribing for the same, and five per cent. per month thereafter. The board of directors are authorized to take and accept of additional stock and subscriptions in money, real estate, or other property, for the benefit of the company.

254 ARTICLE IX. Any person owning one or more shares of stock as provided by article seven hereof, upon which there remains no unpaid assessment or installment then due, shall be entitled at all meetings of the stockholders to one vote for each share of such stock.

ARTICLE X. Certificates of stock shall be issued to all subscribers, with an endorsement of the amount paid thereon; such certificate shall only be assignable on the books of the company under such regulations as the board may adopt. If any installment of stock should not be paid

within sixty days after it is due the board may, at their discretion, declare such stock and the payments made thereon forfeited.

ARTICLE XI. The indebtedness of liability of the corporation shall in no case exceed two-thirds of the capital stock.

ARTICLE XII. The private property of the stockholders shall
255 not be held liable for the debts of the corporation beyond the amount of the unpaid installments on the stock owned by them.

ARTICLE XIII. The time of the commencement of this corporation shall be on the twenty-seventh day of May, 1868, and continue for fifty years, with the privilege and right of renewal.

ARTICLE XIV. These articles may be altered or amended at any annual meeting of the corporation, but no alteration or amendment shall be made without previous notice thereof having been given by publication in some newspaper as convenient as practicable to the principal place of business of the company for four consecutive weeks previous thereto; which last publication shall be at least thirty days prior to the day of said meeting. The articles of incorporation may also be amended by the unanimous vote of all the directors.

256 ARTICLE XV. The board of directors shall employ a suitable person to act as secretary of said company, to keep a correct and full account of all its affairs; which shall at all times be subject to the inspection of any stockholder. Said board are authorized to employ such other clerks, managers, and agents as they may deem essential to the good of the company, and the board may fill, by appointment, all vacancies in their body. The affairs of the company shall be conducted by the board of directors, and they are, as a board, hereby invested with all the powers and authority necessary to carry out the objects of this corporation, as limited by these articles. The board of directors may also adopt such by-laws as they may deem to be for the best interests of the corporation not inconsistent with these articles.

257 ARTICLE XVI. The treasurer shall give bonds in a sum to be fixed by the board of directors, with security to be approved by them, conditioned for the faithful performance of his duties. The board of directors may at any time require additional bonds to be given by said treasurer.

ARTICLE XVII. All bonds for loans and certificates of stock shall be signed by the president and countersigned by the secretary.

ARTICLE XVIII. At all meetings of the stockholders a majority of all the stock subscribed, upon which there are no unpaid assessments, must be represented, directly or by proxy, before business affecting the company can be transacted.

ARTICLE XIX. Special meetings of the stockholders may be convened by the president by order of the board of directors, or when-
258 ever stockholders owning a majority of the stock of said company shall apply therefor by petition in writing, directed to the president, through the secretary. The business of special meetings shall be confined to the objects specified in the notice calling the same.

Amendments to the articles of incorporation.

ARTICLE I. Resolved by the board of directors of the Davenport and S't Paul Railroad Company, That the office and principal place of business of said company be changed from Delhi, Iowa, to Davenport, Iowa.

ARTICLE II. At a meeting of the board of directors of the Davenport and S't Paul Railroad Company, held at the office of the company,

in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by said board of directors, by a unanimous vote, That
259 article six of the articles of incorporation of the Davenport and S't Paul Railroad Company be amended by striking out from said article six the words "Canton," "Sand Spring," and "Brush Creek."

ARTICLE III. At a meeting of the board of directors of the Davenport and S't Paul Railroad Company, held at the office of the company, in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by said board of directors, by a unanimous vote, That the following be adopted as a substitute for article two of the articles of incorporation of the Davenport and S't Paul Railroad Company, viz:

"The elective officers of the corporation shall consist of a president, vice-president, and treasurer, and board of directors, consisting of thirteen members. The president and vice-president shall be ex-
260 officio members of the board. Said directors shall be elected by the stockholders at their annual election, and shall hold their offices for one year and until their successors are elected and qualified. The board of directors shall, upon their election, immediately proceed to elect a president, vice-president, and treasurer, who shall also hold their offices for the term of one year and until their successors are elected and qualified. Nine members of the board shall constitute a quorum."

ARTICLE IV. At a meeting of the board of directors of the Davenport and S't Paul Railroad Co., held at the office of the company, in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by the said board of directors, by a unanimous vote, that article eight of the articles of incorporation of the Davenport and S't Paul Railroad Company be amended by adding thereto the following, viz: "The
261 board of directors are hereby authorized to take and accept of stock upon other terms than those provided for in said article, and with such conditions as they may deem for the benefit of the company."

ARTICLE V. At a meeting of the board of directors of the Davenport and St. Paul Railroad Company, held at the office of said company in the city of Davenport, on the 10th day of September, 1869, the following amendments to the articles of incorporation of said company were unanimously adopted, to wit:

"Resolved, That the articles of incorporation be so amended as to allow the president elected at this meeting to hold his office until the annual election of the stockholders in January, 1872, and to discharge the duties of treasurer until the further order of the board of directors."

"Resolved, That the articles of incorporation be so amended
262 as to allow the directors now elected to hold their offices until the annual meeting of the stockholders in January, A. D. 1872."

ARTICLE VI. At the annual meeting of the stockholders of the Davenport and St. Paul Railroad Co., held at the office of the company in Davenport, Iowa, on the 4th day of January, 1871, Article VII of the articles of incorporation was amended by increasing the capital stock to nine millions of dollars.

ARTICLE X of said articles of incorporation was amended by striking out the word "shall" in the first line, and substituting therefor the word "may."

ARTICLE VII. At a meeting of the board of directors held at the office of the company at Davenport, on the 4th day of January, 1871, it was by unanimous vote,

263 "Resolved, That Article VI of the article of incorporation be

amended by striking out the words 'Cascade,' 'Canton,' and 'Sand Springs.'

"Resolved, That the articles of association be amended so that the annual election of officers shall be held on the third Wednesday after the first Monday in Januarey."

EXHIBIT C.

Trust deed.

The Davenport and St. P. R. R. Co. to John Edgar Thompson and William Dennison.

This indenture, made on the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, between the Davenport and St. Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part,
264 and John Edgar Thompson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, party of the second part, witnesseth:

That whereas the said party of the first part is authorized by law to borrow all such sum or sums of money as shall be necessary for the construction, equipment, and maintenence of its road, and to convey all its corporate property, franchises, and effects, by mortgages and deeds of trust, to secure the payment of all such indebtedness as shall be so contracted by it;

And whereas the said part' of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute, and in its corporate name to issue bonds, to be designated first mortgage bonds, to be secured by a mortgage, or deed of trust, in such form and with such covenants and conditions as the
265 said president should deem most desirable for the best interests of the said corporation, for the purpose of securing the necessary means to iron and equip its said railroad, and a sinking fund of $40,000 per annum to begin July 1st, 1875; the said bonds to be issued at a rate not to exceed the sum of $20,000 for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time as the said work shall progress;

And whereas the said resolution authorized the said president to designate the trustees, and John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds, so to be issued, to incorporate in such mortgage or
266 deed of trust as should executed for the purpose aforesaid such covenants and conditions as should be deemed by him necessary and proper to promote and sustain public confidence in the security of the said bonds and fix the rate of interest which the said bonds should bear;

And whereas the said president has determined to issue the said bonds in the sums of $1,000 each, payable at the agency of the said railroad company in the city of New York, on the first day of July, in the year of our Lord one thousand nine hundred and eleven, bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort at suitable agencies, to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds payable in gold coin of the United States

267 of America of or equal to the present standard, and to have the said bonds duly prepared and deposited with the said parties of the second part to be delivered over by them to the treasurer of the said company on the order of the president, in an amount from time to time not to exceed the sum of $20,000 for each mile of said road, upon which the work of grading, bridging, and tieing shall have been completed, which said bonds are in the form following, that is to say:

FORM OF BOND.

$1,000.] Whole issue, $6,000,000. [No. .

UNITED STATES OF AMERICA, STATE OF IOWA.

Seven per cent first mortgage sinking fund bond.

The Davenport and S't Paul Railroad Company.

The Davenport and S't Paul Railroad Company, a corporation existing under and by authority of the laws of the State of Iowa, prom-
268 ises to pay to John Edgar Thompson or bearer, on the first day of July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin of or equal to the present standard, with interest thereon at 7 per cent. per annum free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor, such interest to be paid either in New York, London, or Frankfort, at suitable agencies, to be hereafter named in each of those cities at the option of the holders as specified in the coupons. In case of default in payment of such interest when due, and continuance of such default for sixty days after demand, the principal of this bond will be subject to become due and payable upon the condition provided in the trust deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dol-
269 lars each, of like tenor and date, numbered from one to six thousand inclusive, to be issued on the said railroad at the rate of twenty thousand dollars per mile, as from time to time the road shall progress from the city of Davenport, in the State of Iowa, to the city of S't Paul, in the State of Minnesota, it being expressly understood that said issue of bonds shall not exceed the amount named per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par. The payment of this bond is secured by a mortgage or deed of trust of the company on its road bed, depot grounds and buildings, rolling stock, machinery, franchises, and all its property of every kind, as also net incomes acquired and to be acquired, to John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 18th, 1871, and duly re-
270 corded in all the counties through which the road is being constructed. This bond is moreover secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875, to be set apart and increased annually, for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

After a registry of ownership, certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of

the company, except if the last transfer be to bearer. Transferability by delivery shall be restored, subject to successive registration and transfer to bearer as aforesaid, at the option of any lawful holder. This bond is further authenticated by the endorsement of said trustees hereon.

In witness whereof the said company has caused the foregoing
271 to be attested, on its behalf, by the signature of its president and secretary and its corporate seal to be affixed hereto, at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

Form of coupon.

£7 5*s.* 10*d.* $35.00. Fl. 87.30.

The Davenport and S't Paul Railroad Company will pay to the bearer, as he may elect, in the city of New York thirty-five dollars United States gold coin, or in London seven pound, five shillings and ten pence sterling, or in Frankfort O. M. eighty-seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18 , being six months interest on bond No. .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the
272 serious of bonds described in and secured by the within mentioned deed of trust or mortgage bearing date the first day of July, A. D. 1871.

Trustees.

And to each of said bonds there is to be affixed the requisite United States internal-revenue stamp; and whereas the said board of directors of the Davenport and St. Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust to the said John Edgar Thompson and William Dennison to secure the payment of the principal and interest of the said bonds, as the same shall become due, according to the tenor and effect thereof:

Now, therefore, this indenture witnesseth that the said. The Davenport and St. Paul Railroad Company, for and in consideration
273 of the premises, and of the sum of one dollar to this day paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds, as the same shall become due and payable, according to the tenor and effect thereof, and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey, release, and confirm unto the said parties of the second part, and to their successor or successors as trustees, all and singular the road-bed

and superstructure of the said The Davenport and S't Paul Railroad, including all branches, side tracks, additions, turnouts, rights of way, depot grounds, coal-lands, timber-lands, and other lands now owned and that may hereafter be acquired by said party of the first part; all depots, station-houses, engine-houses, car-houses, water-tanks, freight-houses,
274 grain-houses, grain-elevators, wood-houses, coal-houses, car-shops and machine-shops, and all other buildings whatsoever, now erected or hereafter to be erected; also all kinds of machinery and tools now held and owned or hereafter to be acquired by said party of the first part for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling stock or equipments, and all tools, implements, fuel, and materials of every kind used or procured for use in the constructing, operating, repairing, or replacing any part or parcel of the said railroad or any part of its appurtenances; also all property and franchises connected with or relating to the said railroad or any part of its business in any wise whatever which are now held or may be hereafter in any way acquired by the said party of the first part; and also all rights, claims, and benefits in or to any lease, contract, or agreement now made or which may hereafter be made by the
275 said first party with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part of, in, or to or out of the same, and every part and parcel thereof.

To have and to hold the premises above particularly described and set forth unto the said parties of the second part, and to their successor or successors as trustee or trustees, in trust nevertheless for the uses and purposes hereinafter set forth and expressed and upon the terms, covenants, agreements, and conditions following, that is to say:

First. The actual possession, occupation, and management and
276 the use and control of the said railroad, and of all the appurtenances thereof, shall be, remain, and lie with the said party of the first part without molestation or interference by or from the parties of the second part or their successor or successors in the said trust, until default be made in the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part, and until such default be made as aforesaid the said party of the first party shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises and dispose of the same in any manner not inconsistent with the terms of the instrument.

Second. The bonds which shall be executed and issued by the said party of the first part, under the provisions of this instrument
277 and therein recited, shall be delivered to the said parties of the second part to be countersigned by them as trustees hereunto, and no bond shall be valid or binding, or be benefited by the provisions hereof, unless the same shall be countersigned by the said parties of the second part, or their successors in the said trust, by signing their names in their own proper handwriting, respectively, to the certificate to each of the said bonds appended and made a part thereof; and the said parties of the second part shall not at any time countersign or permit to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed.

Third. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds, according to the tenor thereof, and if such default shall continue for the
278 period of six months, it shall be lawful for the party of the second part, by their duly authorized officer, agent, or attorney, upon the request of the person or persons owning and holding one-fourth in amount of such delinquent interest coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested or by his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and each and every part thereof, and to have, hold, and use the same under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make, from time to time, all repairs, replacements, additions, and improvements thereto as may seem judicious, and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and prof-
279 its of the same, and of every part thereof; and after deducting the necessary expenses of operating the said railroad and of conducting the business thereof, and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest coupons in the order in which they shall have respectively become due; and after paying all such past-due coupons, and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds which may at that time be due and unpaid rateably and without discrimination or preference.

Fourth. In case default shall be made as aforesaid, and shall
280 continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid, or without entry, on the request of the person or persons owning and holding the majority in amount of the said delinquency, expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed, at public auction, in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale by advertisement, published not less than once a week for six months, in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the sale from time to time by announcement at the time and place advertised, without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or
281 other assurance in the law, to vest in the said purchaser or purchasers of the said premises an absolute estate in the said premises, in fee simple, which sale so made as aforesaid shall be a perpetual lien, both in law and in equity, against the said party of the first part, and all and every other person or persons claiming or to claim the same by, from, through, or under the said party of the first part, and after deducting from the proceeds of such sale just allowance for all the expenses thereof, including a reasonable amount for attorney's fees and any other necessary expense incurred by the said trustees in managing the business of the said railroad while in possession, or in arranging the sale thereof, to apply the remaining proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and the

interest which shall at that time have accrued on the said
282 principal, and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and such accrued and unpaid interest, in United States gold coin at par; and if after satisfaction thereof, as aforesaid, a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power herein granted, or by judicial authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured and then outstanding, in proportion to the respective interests of such bondholders.

Sixth. In case default shall be made in the payment of any
283 half-year's interest on any of the aforesaid bonds, according to the tenor and effect of the coupons thereto annexed; and if such default shall continue for the period of six months after such coupons shall have become due and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct in writing before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable; and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

Seventh. The said party of the first part shall, from time to time, and as often as thereunto requested by the said trustees or their successor or successors in the said trust, execute, acknowledge, and deliver
284 all such further deeds, conveyances, and assurances as shall be necessary for the better assuring unto the trustees aforesaid or their successors, the said railroad and equipments, rights, and equities hereinbefore mentioned or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held or hereafter to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have full power in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops, or other buildings, and shall also have power to convey as aforesaid, on like request, any land or property which in the judgment of the said trustees, for the
285 time being, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request, any land not occupied by the track, which may become disused by reason of a change of the location of any station-house, depot, shop, or building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depots or other buildings as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect, but any land which may be acquired for permanent use
286 in substitution for any so released shall be conveyed to the said trustees upon the trusts of these presents, and the said trustees

for the time being shall also have full power to allow the said party of the first part, from time to time, to dispose of according to their discretion such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees, or otherwise made subject to the operation of these presents.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustees aforesaid, and their successors, to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity or at law to enforce the rights of the holders of the said bonds under these presents upon the written
287 request hereinbefore mentioned when the person or persons making the same shall furnish to the said trustees a proper indemnification against the cost and expenses to be incurred by them therein.

Tenth. It is mutually understood and agreed by and between the parties hereto that the word trustees as used and employed in these presents shall be construed to mean the trustees for the time being, and whenever any vacancy occurs by the death, resignation, disability, or refusal to act of either of the said persons named herein as such trustees, or any of their successors in the said trust, at any time the board of directors, by a majority thereof, of the said The Davenport and S't Paul Railroad Company shall have the right to appoint a successor to fill such vacancy, such appointment to be attested in writing by the signatures of the president and secretary, and by the corporate
288 seal of the said corporation, and the written acceptance of such appointment shall immediately, and by force of such vote of the said board of directors and the said acceptance, vest all authority, right, and power in such new trustee or trustees as fully and completely in all respects as if he or they had been herein named as party or parties to the second part. But if at any time such vacancy should continue for a period of thirty days, by reason of the neglect or refusal of the said board of directors to act in the premises, or for any good cause therefor shown, any court of competent jurisdiction within the State of Iowa, in any of the counties through which the said road may run, shall have power to appoint such trustees, anything in the said bonds or in these presents to the contrary thereof notwithstanding. In all cases in which the trustees may be required to act, they are hereby in-
289 vested with full powers of arbitrament and of compromise, and of appointing agents and attorneys to act in their behalf.

Eleventh. The said party of the first part, in consideration of the premises, and of the said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part, and their successor or successors in the said trust, to have an office or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and Frankfort for the payment of the interest of the bonds hereby secured as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part, and their successor or successors, that the
290 proceeds of the said bonds shall, at all times, be faithfully applied to the uses and purposes hereinbefore specified, and to no other use or purpose whatsoever.

Thirteenth. The said party of the first part agrees and covenants with the party of the second part and their successors that it will create

a sinking fund for the redemption of the whole amount of the bonds hereby secured, and will, therefore, set apart and deposit with a sinking fund commissioner or commissioners, to be appointed by the party of the first part, on the first day of July, 1875, the sum of $40,000, and will, on the first day of July of each and every year thereafter, deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking-fund until the
291 maturity of said bonds; such sinking-fund moneys shall, from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds hereby secured, or such other bonds as shall be designated by the party of the first part, with the consent of the said parties of the second part, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking-fund and compounded therein continually, and reinvested in like manner with the other monies of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured. That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking-fund, and every person in charge of or connected with the same, and shall from time to time direct in what bonds or security it shall
292 be invested, and at what price or rates, and how it shall be kept, and the manner of keeping the accounts thereof; and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe keeping: Provided, That no securities shall be purchased for said fund other than the bonds secured hereby without the consent of the parties of the second part as aforesaid.

Fourteenth. And the said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained, to be by the said party of the first part performed and kept.

Fifteenth. If the party of the first part shall well and truly pay the
293 sums of money herein required to be paid by the said party, and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

Sixteenth. It is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that said trustee shall be responsible for gross negligence or wilful default only; that they shall not be in any manner re-
294 sponsible for any default or misconduct of each other; that they shall not be held obliged by the terms of this instrument to demand and take actual possession of and operate the road and premises hereby granted and demised, except at their own option; that said trustees or their successors in office shall not be required to act in the execution of any of the other trusts hereby created, unless the parties requesting their action shall give them sufficient indemnity against the

charges and expenses to be incurred; that the said trustees or trustee shall be entitled to receive a reasonable allowance for any service which may be rendered by them or him in the execution and enforcement of the trust hereby created, and for all expenses, counsel fees, and other necessary charges to which they or he may be subject; that either of said trustees may resign and discharge himself of the trust created by these presents, by notice in writing to the party of the first part,
295 three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice.

In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary; and the parties of the second part to testify their acceptance of the said trusts have hereunto subscribed their names on the day and year first hereinbefore written.

[SEAL.] H. PRICE, *President.*
W. H. PRICE, *Secretary.*
[SEAL.] J. EDGAR THOMPSON,
[SEAL.] W. DENNISON,
Trustees.

Witnesses:
HENRY C. SPACKMAN.
W'M M. SPACKMAN.
P. W. HUNTINGTON.
E. C. SMITH.

296 STATE OF IOWA,
County of Scott, ss:

Be it remembered that on this first day of July, in the year of our Lord one thousand eight hundred and seventy-one, before me, a notary public in and for the county and State aforesaid, personally came Hiram Price, president, and William H. Price, secretary of the Davenport and St. Paul Railroad Company, to me known to be the identical person described in and who executed the within and foregoing instrument, and severally acknowledged that they executed the same as and for their voluntary act and deed, in their respective capac'ties as president and secretary of the said The Davenport and St. Paul Railroad Company, and as and for the act and deed of the said corporation; and furthermore they did severally acknowledge and declare that the seal attached to said instrument is and was, at the date thereof, the corporate
297 seal of the said corporation, and was so affixed to the said instrument by order of the board of directors of the said company, and that by like authority they have executed the same as and for the act and deed of the said company.

Given under my hand and seal notarial at the city of Davenport, in the county and State aforesaid, on the day and year above written.

[SEAL.] ALFRED SULLY
Notary Public, Scott County, Iowa.

THE STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the undersigned, a notary public of the State of Pennsylvania, duly commissioned and qualified, personally came the above-named John Edgar Thompson, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and
298 personally known to me as the person who signed the same as

a sinking fund for the redemption of the whole amount of the bonds hereby secured, and will, therefore, set apart and deposit with a sinking fund commissioner or commissioners, to be appointed by the party of the first part, on the first day of July, 1875, the sum of $40,000, and will, on the first day of July of each and every year thereafter, deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking-fund until the
291 maturity of said bonds; such sinking-fund moneys shall, from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds hereby secured, or such other bonds as shall be designated by the party of the first part, with the consent of the said parties of the second part, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking-fund and compounded therein continually, and reinvested in like manner with the other monies of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured. That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking-fund, and every person in charge of or connected with the same, and shall from time to time direct in what bonds or security it shall
292 be invested, and at what price or rates, and how it shall be kept, and the manner of keeping the accounts thereof; and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe keeping: Provided, That no securities shall be purchased for said fund other than the bonds secured hereby without the consent of the parties of the second part as aforesaid.

Fourteenth. And the said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained, to be by the said party of the first part performed and kept.

Fifteenth. If the party of the first part shall well and truly pay the
293 sums of money herein required to be paid by the said party, and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

Sixteenth. It is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that said trustee shall be responsible for gross negligence or wilful default only; that they shall not be in any manner re-
294 sponsible for any default or misconduct of each other; that they shall not be held obliged by the terms of this instrument to demand and take actual possession of and operate the road and premises hereby granted and demised, except at their own option; that said trustees or their successors in office shall not be required to act in the execution of any of the other trusts hereby created, unless the parties requesting their action shall give them sufficient indemnity against the

charges and expenses to be incurred; that the said trustees or trustee shall be entitled to receive a reasonable allowance for any service which may be rendered by them or him in the execution and enforcement of the trust hereby created, and for all expenses, counsel fees, and other necessary charges to which they or he may be subject; that either of said trustees may resign and discharge himself of the trust created by these presents, by notice in writing to the party of the first part,
295 three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice.

In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary; and the parties of the second part to testify their acceptance of the said trusts have hereunto subscribed their names on the day and year first hereinbefore written.

[SEAL.] H. PRICE, *President.*

W. H. PRICE, *Secretary.*

[SEAL.] J. EDGAR THOMPSON,

[SEAL.] W. DENNISON,

Trustees.

Witnesses:
HENRY C. SPACKMAN.
W'M M. SPACKMAN.
P. W. HUNTINGTON.
E. C. SMITH.

296 STATE OF IOWA,
County of Scott, ss:

Be it remembered that on this first day of July, in the year of our Lord one thousand eight hundred and seventy-one, before me, a notary public in and for the county and State aforesaid, personally came Hiram Price, president, and William H. Price, secretary of the Davenport and St. Paul Railroad Company, to me known to be the identical person described in and who executed the within and foregoing instrument, and severally acknowledged that they executed the same as and for their voluntary act and deed, in their respective capacities as president and secretary of the said The Davenport and St. Paul Railroad Company, and as and for the act and deed of the said corporation; and furthermore they did severally acknowledge and declare that the seal attached to said instrument is and was, at the date thereof, the corporate
297 seal of the said corporation, and was so affixed to the said instrument by order of the board of directors of the said company, and that by like authority they have executed the same as and for the act and deed of the said company.

Given under my hand and seal notarial at the city of Davenport, in the county and State aforesaid, on the day and year above written.

[SEAL.] ALFRED SULLY
Notary Public, Scott County, Iowa.

THE STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the undersigned, a notary public of the State of Pennsylvania, duly commissioned and qualified, personally came the abovenamed John Edgar Thompson, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and
298 personally known to me as the person who signed the same as

such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this sixth day of July, A. D. 1871.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss :

Before me, the undersinged, a notary public of the State of Ohio, duly commissioned and qualified, personally came the above-named William Dennison, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledge that he did sign, seal, and execute the same for the uses and purposes therein
299 mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this first day of July, anno Domini 1871.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin Co., O.

Filed for record the 2d day of February, 1872, at 3¼ o'clock p. m.
HENRY HARGER,
Recorder.

STATE OF IOWA,
Delaware County, ss :

This instrument was filed for record this 7th day of February, 1872, at 3.15 o'clock p. m., and recorded in book B of mortgages of town lots on pages 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, and 485.

HENRY HARGER,
Recorder.

300 *Mortgage.*

D. and S't Paul R. R. Co. to John Edgar Thompson et al.

This indenture, made on the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, between the Davenport and S't Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part, and John Edgar Thompson of the city of Philadelphia, in the State
301 of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part, witnesseth :

That whereas the said party of the first part is authorized by law to borrow all such sum or sums of money as shall be necessary for the construction, equipment, and maintenance of its road, and to convey all its corporate property, franchises, and effects by mortgages and deeds of trust to secure payment of all such indebtedness as shall be so contracted by it.

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute and in its corporate name to issue bonds, to be designated first-mortgage bonds, to be secured by a mortgage or deed of trust, in such form and with such covenants and conditions as the said president should deem most desirable for the best interests of the
302 said corporation, for the purpose of securing the necessary means

to iron and equip its said railroad, and a sinking-fund of $40,000 per annum, to begin July 1st, 1875, the said bonds to be issued at a rate not to exceed the sum of $20,000 for each mile of the said railroad, upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time as the said work shall progress. And whereas the said resolution authorized the said president to designate the trustees, and John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees, to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds so to be issued, to incorporate in such mortgage or deed of trust as should be executed for the purpose aforesaid such covenants
303 and conditions as should be deemed by him necessary and proper to promote and sustain public confidence in the security of the said bonds, and fix the rate of interest which the said bonds should bear.

And whereas the said president has determined to issue the said bonds in the said sums of $1,000 each, payable at the agency of the said railroad company, in the city of New York, on the first day of July, in the year of our Lord one thousand nine hundred and eleven, bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort at suitable agencies to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds payable in gold coin of the United States o America of or equal to the present standard; and to have the said bonds duly prepared and deposited with the said
304 parties of the second part, to be delivered over by them to the treasurer of the said company, on the order of the president, in an amount from time to time not to exceed the sum of $20,000 for each mile of the said road, upon which the work of grading, bridging, and tieing shall have been completed, which said bonds are in the form following, that is to say:

FORM OF BOND.

$1,000] Whole issue, $6,000,000. [No. .

UNITED STATES OF AMERICA, STATE OF IOWA.

Seven per cent. first-mortgage sinking-fund bond.

THE DAVENPORT AND ST. PAUL RAILROAD COMPANY.

The Davenport and St. Paul Railroad Company, a corporation existing under and by authority of the laws of the State of Iowa, promises to pay to John Edgar Thompson or bearer on the first day of
305 July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin, of or equal to the present standard, with interest thereon at 7 per cent. per annum, free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor, such interest to be paid either in New York, London, or Frankfort, at suitable agencies to be hereafter named in each of those cities, at the option of the holders as specified in the coupons. In case of default in payment of such interest when due, and continuance of such default for sixty days after demand, the principal of this bond will be subject to become due and payable upon the condition provided in the trust deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dollars each, of like tenor and date, numbered from one to six thousand inclu-
306 sive, to be issued on the said railroad at the rate of twenty thousand dollars per mile, as from time to time the road shall progress from the city of Davenport, in the State of Iowa, to the city of S't Paul, in the State of Minnesota, it being expressly understood that said issue of bonds shall not exceed the amount name' per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par. The payment of this bond is secured by a mortgage or deed of trust of the company on its road bed, depot grounds and buildings, rolling stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1st, 1871, and duly recorded in all the counties through which the road is being constructed.
307 This bond is moreover secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875, to be set apart and increased annually for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

After a registry of ownership, certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of the company, except if the last transfer be to bearer, transferability by delivery shall be restored; subject to successive registration and transfers to bearer as aforesaid at the option of any lawful holder. This bond is further authenticated by the endorsement of said trustees hereon.

In witness whereof the said company has caused the foregoing to be attested, on its behalf, by the signature of its president and sec-
308 retary, and its corporate seal to be affixed hereto at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

Form of coupon.

£7 5s. 10d. $35.00. Fl. 87.30.

The Davenport and S't Paul Railroad Company will pay to the bearer as he may elect, in the city of New York, thirty-five dollars United States gold coin, or in London seven pounds five shilllings and ten pence sterling, or in Frankfort O. M., eighty-seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18 , being six months' interest on bond No. .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the serious of bonds described in and secured by the within mentioned deed of
309 trust or mortgage, bearing date the first day of July, A. D. 1871.

Trustees.

And to each of the said bonds there is to be affixed the requisite United States internal-revenue stamp; and whereas the said board of directors of the Davenport and S't Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name and to affix thereto its corporate seal, a deed of trust to the said John Edgar Thompson and William Dennison to secure the payment of the principal and interest of the said bonds as the same shall become done according to the tenor and effect thereof: Now, therefore, this indenture witnesseth, that the said The Davenport and S't Paul Railroad Company, for and in consideration of the premises and of the sum
310 of one dollar paid to it this day, paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds as the same shall become due and payable, according to the tenor and effect thereof, and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey, release, and confirm, unto the said parties of the second part and to their successor or successors as trustees, all and singular the road, bridges, and superstructure of the said The Davenport and S't Paul Railroad, including all branches, side tracks, additions, turnouts, right of way, depot grounds, coal lands, timber lands, and other lands now owned and that hereafter may be acquired by said party of the first part, all depots, station-houses, grain-houses, engine-houses, car-houses, water-tanks, freight-houses, grain elevators, wood-houses, coal-houses, car-shops, and machine-
311 shops, and all other buildings whatsoever now erected or hereafter to be erected. Also, all kinds of machinery and tools now held and owned or hereafter to be acquired by said party of the first part for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling-stock or equipment, and all tools, implements, fuel, and materials of every kind used or procured for use in the constructing, operating, repairing, or replacing any part or parcel of the said railroad or any part of its appurtenances. Also, all property and franchises connected with or relating to the said railroad, or any part of its business in anywise whatsoever, which are now held or may be hereafter in any way acquired by the said party of the first part; and also all right, claims, and benefits in or to any lease, contract, or agreement now made or which may be hereafter made by the said
312 first party with any person or persons whomsoever, together with all and singular the tenements and appurtenances thereto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereto; and also, all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part of, into, or out of the same and every part and parcel thereof.

To have and to hold the premises above particularly described and set forth with the said parties of the second part, and to their successor or successors as trustee or trustees. In trust, nevertheless, for the uses and purposes hereinafter set forth and expressed and upon the terms, covenants, agreements, and conditions following; that is to say:

First. The actual possession, occupation, and management, and the use and control of the said railroad and of all the appurtenances
313 thereof, shall be, remain, and lie with the said party of the first part without molestation or interference by or from the parties of the second part, or their successor or successors in the said trust,

until default be made in the payment of the principal of the said bonds or some of them, or until default be made in respect to something herein required to be done by the said party of the first part, and until such default be made as aforesaid, the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises, and dispose of the same in any manner not inconsistent with the terms of this instrument.

Second. The bonds, which shall be executed and issued by the said party of the first part under the provisions of this instrument and therein recited, shall be delivered to said trustees to be certified by them as trustees, said certificate to be signed in the proper handwrit-
314 ing of at least one of the said trustees; and no bond shall be valid or binding or be benefited by the provisions hereof, unless the same shall be certified by the said trustees in form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed.

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that, although by reason of the terms and limitations in these presents expressed it shall be unlawful for the trustees to certify any part of the issue of bonds herein provided for, nevertheless, upon deposit of the purchase money thereof by the purchaser as hereinafter provided, the bonds so purchased shall be certified by the trustees and issued to such purchaser; provided
315 always that the purchase money therefor shall be deposited to the credit of the trustees in some banking house in the city of New York or Philadelphia, to be named by both the purchasers and the trustees, which said purchase money shall be used only in payment for iron and equipment of said railroad, at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress, upon written direction of the trustees.

Third. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds according to the tenor thereof, and if such default shall continue for the period of six months, it shall be lawful for the parties of the second part, by
316 their duly-authorized officer, agent, or attorney, upon the request of the person or persons owning and holding one-fourth in amount of such delinquent interest coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested or by his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and each and every part thereof, and to have, hold, and use the same under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make, from time to time, all repairs, replacements, additions, and improvements thereto as may seem judicious; and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and profits of the same, and of every part thereof; and after deducting the necessary expenses
317 of operating the said railroad and of conducting the business thereof, and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises or any part thereof, as well as a just compensation for their

or his own services, to apply the moneys arising as aforesaid to the payment of interest coupons in the order in which they shall have respectively become due; and after paying all such past-due coupons and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds which may be due and unpaid rateably and without discrimination or preference.

Fourth. In case default shall be made as aforesaid, and shall continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid, or without entry, on the request of
318 the person or persons owning and holding the majority in amount of the said delinquency, expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed, at public auction in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale by advertisement published not less than once a week for six months in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the said sale from time to time by announcement at the time and place advertised without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or other assurance in the law to vest in the said purchaser or purchasers of the said premises an absolute estate in the said premises in fee simple,
319 which sale so made as aforesaid shall be a perpetual lien, both in law and in equity, against the said party of the first part and all and every other person or persons claiming or to claim the same by, from, through, or under the said party of the first part; and after deducting from the proceeds of such sale just allowance for all the expenses thereof, including a reasonable amount for attorney's fees and any other necessary expenses incurred by the said trustees in managing the business of the said railroad while in possession or in arranging the sale thereof, to apply the remaining proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably, to the aggregate amount of such unpaid principal and such accrued and
320 unpaid interest, in United States gold coin at par, and if after satisfaction thereof as aforesaid a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power herein granted or by judicial authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured and then outstanding, in proportion to the respective interests of such bondholders.

Sixth. In case default shall be made in payment of any half year's interest on any of the aforesaid bonds according to the tenor and effect of the coupons thereto annexed, and if such default shall continue for the period of six months after such coupons shall have become
321 due and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct in writing before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable; and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

Seventh. The said party of the first part shall, from time to time and as often as thereunto requested by the said trustees or their successor or successors in the said trust, execute, acknowledge, and deliver all such further deeds, conveyances, and acceptances as shall be necessary for the better assuring unto the trustees aforesaid, or their successors, the said railroad and equipments, rights, and equities herein-
322 before mentioned or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held or hereafter to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops, or other buildings; any land or property which, in the judgment of the said trustees for the time being, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material; and also to convey as aforesaid, on like request, any land, not
323 occupied by the track, which may become disused by reason of a change of the location of any station-house, depot, shop, or building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part may deem it expedient to disuse or abandon by means of such change, and to consent to any such change and to such other changes in the location of the track or depots or other buildings as, in their judgment, shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any proceeds from such sales are to be placed at the disposal of the trustees, to be by them applied to the sinking-fund; and any land which may be acquired for permanent use in substitution for any so released shall be conveyed to the said trustees upon the trusts of these presents. And the said trustees for the time being shall also have full power to allow the said party of the first part, from time to time,
324 to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees or otherwise made subject to the operation of these presents.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustees aforesaid and their successors to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity or at law to enforce the rights of the holders of the said bonds under these presents, upon the written request hereinbefore mentioned, when the person or persons making the same shall furnish to the said trustees a proper indemnification against the cost and expenses to be incurred by them therein.

325 "Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee,' respectively, as used in these presents shall be construed to mean the persons or person who, for the time being, shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be en-

titled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust-property, and that neither of the said trustees shall be responsible for the default or misconduct of the other or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care.

326 And it is hereby further agreed, that either of the said trustees may resign and be discharged from the performance of the trust created by these presents by giving notice in writing to the said party of the first part, and to his associate trustee, if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation; and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds by an instrument in writing signed by such majority in interest. And it is further agreed, that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die or resign, or be removed, as herein provided, or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of

327 said bonds then outstanding by an instrument in writing duly executed by such holders; that in case a vacancy shall at any time occur in said trust by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which it is herein made the duty of the said trustees to do as distinguished from matters in their discretion may be done by one of said trustees as validly as by both in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning or being removed shall be transferred

328 to and become vested in the new trustee so appointed without any further assurance or conveyance; but the trustee so resigning or being removed shall, on the written request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee under or by virtue of these presents: Provided, nevertheless, and it is hereby agreed and declared, that in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made on reasonable notice in writing to the said party of the first part, and to the surviving and continuing trustee, if there be

329 such, by holders of said bonds to the aggregate amount of one hundred thousand dollars to any court of competent jurisdiction for the appointment of a new trustee or new trustees."

Eleventh. The said party of the first part in consideration of the premises, and of the said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part, and their successor or successors in the said trust, to have an office or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and

Frankfort on the Maine, for the payment of the interest of the bonds hereby secured as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said
330 parties of the second part and their successor or successors that the proceeds of the said bonds shall at all times be faithfully applied to the uses and purposes hereinafter specified and to no other use or purpose whatsoever.

Thirteenth. The said party of the first part agrees and covenants with the parties of the second part and their successors that it will create a sinking fund for the redemption of the whole amount of the bonds hereby secured, and will therefore set apart and deposit with a sinking-fund commissioner or commissioners to be appointed by the party of the first part on the first day of July, 1875, the sum of $40,000, and will on the first day of July of each and every year thereafter deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded, with the interest thereof, for the increase of the said sinking fund until the
331 maturity of said bonds; such sinking-fund moneys shall from time to time under the orders of the party of the first part be invested in the purchase of the bonds hereby secured as long as the same can be purchased under or at par, and when this cannot be done then in such other bonds as shall be designated by the party of the first part with the consent of the said parties of the second part, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into such sinking fund, and compounded therein continually and reinvested in like manner with the other monies of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured. That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking fund, and every person in charge of or connected with the same,
332 and direct how it shall be kept and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for its safe keeping; provided, that no securities shall be purchased for said fund other than the bonds secured hereby without the consent of the parties of the second part as aforesaid.

Fourteenth. And the said party of the first part for the considerations aforesaid hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained to be by the said party of the first part performed and kept.

Fifteenth. If the party of the first part shall well and truly pay
333 the sums of money herein required to be paid by the said party and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

Sixteenth. In all cases in which the trustees may be required to act, they are hereby invested with full powers of arbitrament and of com-

promise, and of appoining agents and attorneys to act in their behalf.

In testimony whereof the said party of the first part has caused
334 its corporate seal to be hereunto affixed and these presents to be attested by the signatures of its president and secretary, and the parties of the second part, to testify their acceptance of the said trusts, have hereunto subscribed their names on the day and year first hereinbefore written.

DAVENPORT AND S'T PAUL RAILROAD COMPANY,
[SEAL.] By GEO. H. FRENCH,
President.

Attest:
[SEAL.] W. H. PRICE,
Secretary D. and S't P. R. R. Co.

J. EDGAR THOMPSON, [SEAL.]
Trustee.
W. DENNISON, [SEAL.]
Trustee.

Signed, sealed, and delivered in presence of—
LEWIS SANDERS,
GARDINER MCCANDLESS.

335 UNITED STATES OF AMERICA:
State of New York, City of New York, ss:

On this sixteenth day of May, A. D. 1872, before me, a notary public, duly commissioned by the governor of the State of New York, and duly qualified to administer oaths and take acknowledgment of deeds for the county of New York, personally appeared Geo. H. French and W. H. Price, to me known, and known to me to be the identical president and secretary of the Davenport and S't Paul Railroad Company, and known to me to be the persons who executed the foregoing instrument, who, being by me duly and severally sworn, said that they reside in the city of Davenport, State of Iowa; that they were respectively the president and secretary of the said company; that they 'new the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board
336 of directors of said company, and that they signed their names thereto by the like order as president and secretary, respectively, of said company, and the said president and secretary thereupon severally acknowledged the execution of the foregoing instrument as the voluntary act and deed of said company; and on the same day, before me, the said notary public, personally appeared William Dennison, to me known, and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged, as such trustee, that he executed the same as his voluntary act and deed; and on the fourteenth day of May, A. D. 1872, before me, the said notary public, personally appeared J. Edgar Thompson, to me known, and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged,
337 as such trustee, that he executed the same as his voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my seal.
[SEAL.] LEWIS SANDERS,
Notary Public, New York Co.

Filed for record 4th June, 1872, at 7½ o'clock a. m.
HENRY HARGER,
Recorder,
By J. L. STONE, *Deputy.*

Amendment to mortgage.

The Davenport and S't Paul Railroad Co. to John Edgar Thompson Co.:

This indenture, made the first day of July in the year of our Lord one thousand eight hundred and seventy-one, by and between the Davenport and S't Paul Railroad Company, a corporation formed, organ-
338 ized, and existing by and under the laws of the State of Iowa, party of the first part, and John Edgar Thompson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part:

Whereas the said party of the first part has made, executed, and delivered to said parties of the second part, a certain indenture of even date with these presents, and therein called a mortgage or deed of trust, to secure the payment of its first-mortgage bonds, as in said indenture mentioned:

And whereas it is desirable for the better protection of the rights of purchasers and holders of said bonds, that said mortgage or deed of trust should be amended in the manner hereinafter set forth:

Now, therefore, these presents witness that, in consideration of
339 the premises, and of one dollar to each by the other in hand paid, the said parties of the first part and the said parties of the second part do hereby mutually grant, covenant, promise, and agree to and with each other as follows:

That the said indenture of mortgage, or deed of trust, shall be, and shall for all intents and purposes be considered and taken to be amended in the following respects:

First. That in lieu of the tenth and sixteenth articles thereof, the said sixteenth article be omitted entirely from said indenture, and the said tenth article as herein contained be amended and read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee,' respectively, as used in these presents, shall be construed to mean the 'persons or person who, for the
340 time being, shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trusts to be paid by the said party of the first part, or out of the income of the trust property; and that neither of the said trustees shall be responsible for the default or misconduct of the other, or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care. And it is herby further agreed, that either of the said trustees may resign and be discharged from the performances of the trust created by these presents, by giving notice in writing to the said party of the first part and to his associate trustee, if there be such,
341 of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation, and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing signed by such majority in interest. And it is further agreed that, in case at any time hereafter the said trustees or either of them, or any trustee hereafter appointed, shall die or resign, or be removed as herein provided or otherwise, or shall be-

come incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding by an instrument in writing duly executed by such holders; that, in case a vacancy shall at any time occur in said trust by death, resignation, or otherwise, the surviving or
342 continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which is herein made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that, upon the resignation or removal of any trustee and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning or being removed, shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance; but the trustee so resigning or being removed shall, on the written request of the party of the first part or of the new trustee who may be appointed, immediately
343 execute a proper deed or deeds of conveyance to vest in such new trustee, all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee, under or by virtue of these presents. Provided, nevertheless, and it is hereby agreed and declared that, in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made, on reasonable notice in writing, to the said party of the first part and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggregate amount of one hundred thousand dollars, to any court of competent jurisdiction, for the appointment of a new trustee or new trustees."

344 Second. And also that in the trustees' certificate, endorsed on said bond at the request of the holder or holders thereof at any time, shall be added the words "and the supplemental deed of the same date."

Third. And also that article second of said indenture of mortgage or deed of trust, as therein contained, be amended and made to read as follows:

"Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument, and therein recited, shall be delivered to said trustees to be certified by them as trustees, and no bond shall be valid or binding, or be benefited by the provisions hereof, unless the same shall be certified by the said trustees in the form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which
345 the work of grading, bridging, and tieing shall have been finished and completed, save as hereinafter provided."

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that if at any time before the whole work of grading, bridging, and tieing the entire line of the railroad in said indenture mentioned shall have been completed, any part of the bonds in said indenture provided for cannot be issued by reason of the terms and limitations therein expressed; and if the purchasers or purchaser of such bonds shall make deposit of the purchase-money

thereof in the manner hereinafter provided, then and in that case such bonds shall be issued and certified by the trustees and delivered to the purchasers thereof: Provided, always, that the purchase-money therefor shall be deposited to the credit of the trustees in some
346 banking-house in the city of New York or Philadelphia, to be named by both the purchasers and trustees; which said purchase-money shall be used only in payment for iron and equipment of said railroad, at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time, as the said work shall progress, upon written direction of the trustees.

In witness whereof the said Davenport and S't Paul Railroad Company hath caused these presents to be sealed with its common seal and to be subscribed by its president and secretary; and the said John Edgar Thompson and William Dennison have hereunto set their hands and seals the day and year first above written.

[SEAL.] GEO. H. FRENCH, *Pres't.*

W. H. PRICE, *Sec'y.*

J. EDGAR THOMPSON,
W. DENNISON,
Trustees.

347 STATE OF IOWA,
County Scott:

Be it remembered that on this first day of February, anno Domini one thousand eight hundred and seventy-two, before me, a notary public in and for the said county, personally came Geo. H. French, president of the Davenport and S't Paul Railroad Company, and William H. Price, the secretary thereof, to me known to be the identical persons whose names are subscribed to the foregoing instrument, and in due form of law acknowledged the execution and delivery of the same to be their voluntary act and deed, done by virtue of the power in them vested by a resolution of the board of directors of the said company, to that end duly and amply passed and adopted, as and for the voluntary act and deed of the said the Davenport and S't Paul Railroad Company.

In testimony whereof I have hereunto set my hand and nota-
348 rial seal the day and year above written.

[SEAL.] ALFRED SULLY,
Notary Public, Scott County, Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a notary public in and for the said city of Philadelphia, personally appeared the within-named J. Edgar Thompson, trustee, and in due form of law acknowledged that he executed the foregoing indenture as his voluntary act and deed, and desired that the same might be recorded as such.

In testimony whereof I have hereunto set my hand and notarial seal this third day of February, A. D. 1872.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the subscriber, a notary public in and for said county, personally appeared the within-named William Dennison, trustee, and

349 acknowledged the signing and sealing of the foregoing mortgage or deed of trust to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this fifth day of February, A. D. 1872.

T. J. JANNEY,
Notary Public in and for Franklin Co., O.

Filed for record the 28th day of March, A. D. 1872, at 11 a. m.

HENRY HARGER,
Recorder.

EXHIBIT D.

Amendment to mortgage.

Davenport and S't Paul Railroad Co. to John Edgar Thompson and William Dennison.

This indenture, made the first day of March, in the year of our Lord one thousand eight hundred and seventy-two, by and between
350 the Davenport and Saint Paul Railroad Company, a corporation formed, organized, and existing by and under the laws of the State of Iowa, party of the first part, and John Edgar Thompson, of the city of Philadelphia in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part:

Whereas the party of the first part has made, executed, and delivered to said parties of the second part a certain indenture bearing date the first day of July, one thousand eight hundred and seventy-one, and therein called a mortgage or deed of trust, and at a later day has likewise made, executed, and delivered to said parties of the second part a deed supplemental to and amendatory thereof, likewise bearing date the first day of July, one thousand eight hundred and seventy-one, to secure the payment of its first mortgage bonds as in said two
351 deeds mentioned;

And whereas three thousand of the bonds provided for in said two deeds have been issued by said party of the first part in pursuance of said two deeds before the day of the date of these presents;

And whereas it is deemed desirable for the better protection of holders of said bonds that said mortgage or deed of trust should be further amended in the matter hereinafter set forth, and that provision be made to enable the holders of the said bonds already issued to exchange the same upon surrender thereof for a like amount of bonds of the amended form hereinafter provided for, and upon such surrender and exchange, to acquire all the rights and benefits secured and intended to be secured by these presents:

352 Now, therefore, these presents witness that in consideration of the premises, and of one dollar to each by the other in hand paid, the said party of the first part and the said parties of the second part do hereby mutually grant, covenant, promise, and agree to and with each other, as follows:

That the said indenture of mortgage or trust deed shall be and shall for all intents and purposes be considered and taken to be amended in the following respects:

First. That in lieu of the tenth and sixteenth articles thereof, the said sixteenth article be omitted entirely from said indenture, and the

said tenth article, as therein contained, be amended and made to read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' and 'trustee,' respectively, as used in these
353 presents sahll be construed to mean the persons or person who for the time being shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part or either of them in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property; and that neither of the said trustees shall be responsible for the default or misconduct of the other, or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care. And it is hereby further agreed that either of the said trustees may resign
354 and be discharged from the performance of the trust created by these presents by giving notice in writing to the said party of the first part, and to his associate trustees if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation; and that the said trustees or either of them may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing signed by such majority in interest. And it is further agreed that in case at any time hereafter the said trustees or either of them, or any trustee hereafter appointed, shall die or resign or be removed as herein provided or otherwise, or shall become incapable or unfit to acti n said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing
355 duly executed by such holders that in case a vacancy shall at any time occur in said trust by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which is herein made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that upon the resignation or removal of any trustee and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or convey-
356 ance, but the trustee so resigning or being removed shall, on the written request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee under or by virtue of these presents: Provided, nevertheless, and it is hereby agreed and declared, that in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made, on reason-

able notice in writing to the said party of the first part and to the surviving and continuing trustee, if there be such, by holders of said
357 bonds to the aggregate amount of one hundred thousand dollars to any court of competent jurisdiction, for the appointment of a new trustee or new trustees."

Second. And also the form of bond recited, set forth, and provided for in said mortgage or deed of trust shall be amended in the following particulars, viz: The clause, "The payment of this bond is secured by a mortgage or deed of trust of the company on its road-bed, bridges, depot grounds and buildings, rolling stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1st, 1871," shall be amended and made to read as follows: "The payment of this bond is secured by a mortgage or deed of trust bearing date July 1st, 1871, and by a deed supplemental to and amendatory thereof bearing date March 1st, 1872,
358 executed by said company on its road-bed, bridges, depot grounds and buildings, rolling stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, trustees."

And also that the trustees' certificate endorsed on said bonds shall be amended and made to read as follows: "The undersigned hereby certify that this bond is one of a series of bonds described in and secured by the within-mentioned mortgage or deed of trust, dated July 1st, 1871, and the deed supplemental to and amendatory thereof, dated March 1st, 1872."

Third. And also that article second of said indenture of mortgage or deed of trust, as therein contained, be amended and made to read as follows:

359 "Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument, and therein recited, shall be delivered to said trustees to be certified by them as trustees, and no bond shall be valid or binding or be benefitted by the provisions hereof unless the same shall be certified by the said trustees in the form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road, upon which the work of grading, bridging, and tieing shall have been finished and completed."

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other, that no other or further issue of said bonds in the form provided for in said mortgage or deed of trust shall be reissued by said parties of the first part or certified by
360 said parties of the second part, and that upon surrender of such of said bonds as have been issued before the day of the date of these presents, said party of the first part will issue and deliver in exchange therefor an equal amount of bonds of the amended form hereinabove provided for, and the bonds so received in exchange shall thereupon be cancelled and the obligation thereof extinguished.

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other, that although by reason of the terms and limitations in said mortgage or deed of trust and these presents expressed, it shall be unlawful for the trustees to certify any part of the issue of bonds therein provided for; nevertheless upon deposit of the purchase money thereof by the purchaser as hereinafter in

these presents provided, the bonds so purchased shall be certified
361 by the trustees and issued to such purchaser: Provided always, that the purchase money therefor shall be deposited to the credit of the trustees in some banking house in the city of New York or Philadelphia, to be named by both, the purchasers and the trustee, which said purchase money shall be used only in payment for iron and equipment of said railroad at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad, upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress upon written directions of the trustees.

In witness whereof the said Davenport and S't Paul Railroad Company hath caused these presents to be sealed with its common seal, and to be subscribed by its president and secretary, and the said John
362 Edgar Thompson and William Dennison have hereunto set their hands and seals the day and year first above written.

[SEAL.]

GEO. H. FRENCH, *President.*
W. H. PRICE, *Secretary.*
J. EDGAR THOMPSON,
W. DENNISON,
Trustees.

Signed, sealed, and acknowledged in the presence of—

W'M M. SPACKMAN, HENRY C. SPACKMAN, as to J. Edgar Thompson.
G. MOODIE, T. J. JANNEY, as to William Dennison.

STATE OF IOWA,
Scott County:

Be it remembered that on this sixteenth day of March, A. D. 1872, before me, a notary public in and for Scott County, Iowa, duly
363 qualified, personally came George H. French, president, and William H. Price, secretary of the Davenport and S't Paul Railroad Company, to me personally known to be the identical persons whose names are subscribed to *be* the foregoing instrument, the one as president and the other as secretary of said company, and severally acknowledged the same to be their voluntary act and deed, and the voluntary act and deed of said company.

Witness my hand and notarial seal the day and year last above written.

[SEAL.]

H. A. H. PLAYTER,
Notary Public, Scott Co., Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the undersigned, a notary public for the city of Philadelphia, State of Pennsylvania, duly commissioned and qualified, personally came the within-named J. Edgar Thompson, trustee, and party of
364 the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the use and purposes therein mentioned as his voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my notarial seal this seventh day of March, A. D. 1872.

[SEAL.]

HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the undersigned, a notary public of the State of Ohio in and for said Franklin County, personally appeared the within-named William Dennison, trustee, and a party of the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal,
365 and execute the same for the uses and purposes therein mentioned as his voluntary act and deed.

In witness whereof I have hereunto affixed my hand and notarial seal this fourteenth day of March, A. D. 1872.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin Co., Ohio.

Filed for record the 25th day of March, A. D. 1872, at 12 o'clock m.
HENRY HARGER,
Recorder.

STATE OF IOWA,
Delaware County, ss:

I, H. C. Jackson, recorder of Delaware County, in the State of Iowa, do hereby certify the above and foregoing is a full, true, correct, and examined copy of the record of two mortgages from the Davenport and S't Paul Railroad Co. to J. Edgar Thompson and William Dennison,
366 and two amendatory mortgages to the same, as the same appears in my office in book B of mortgages of town lots, on pages 473, 491, 498, and 510.

Witness my hand this 5th day of August, 1875.
H. C. JACKSON,
Recorder of Del. Co., Iowa.

STATE OF IOWA,
Delaware County, ss:

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the within is a full, true, and complete copy of the record in the action in which the same is entitled, insomuch as the same is set out and shown forth by my certificate on page 117 hereof, as fully and complete as the same now remains on file and of record in my office.

Witness my hand and the seal of said court hereto attached this 8th day of October, 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

367 (Endorsed:) Record. Delaware R. R. Construction Co. vs. Davenport and S't Paul R. R. Co. and others. Printed record filed in this court. Filed Oct. 9, 1875. George B. Corkhill, clerk.

368 Afterwards, to wit, on the 12th day of October, the same being of the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

369 United States circuit court, district of Iowa, Tuesday, Oct. 12, 1875.

DELAWARE R. R. CONSTRUCTION CO.
vs.
DAVENPORT AND S'T PAUL RAILWAY CO. ET AL. } No. 635. Eq.

This day came the trustee defendants and enter appearance by Grant and Smith.

370 On the same day, to wit, Oct. 12, 1875, said W'm Dennison and Lewis H. Meyer, trustees, by their said att'ys, filed in said clerk's office an affidavit in said cause, which said affidavit is in the words and figures following, to wit:

371 STATE OF IOWA,
Delaware County, ss:

I, J. B. Satterlee, being duly sworn, say that I am the clerk of the courts in and for said county; that the reason of the delay on my part in forwarding the transcript case of Del. R. R. Construction Company vs. Davenport and S't Paul R. R. Co. et als. to U. S. circuit court was a misapprehension of instructions on my part, and from no fault of Mess. Grant and Smith.

(Signed) J. B. SATTERLEE.

Subscribed and sworn to by J. B. Satterlee before me this 11th day of Oct., 1875.

[SEAL] (S'g'd) THO'S ARNOLD TWISS,
Notary Public.

(Endorsed:) 635. Eq. Delaware R. R. Construction Co. vs. The Davenport and S't Paul Railway Co. Affidavit of clerk. Filed Oct. 12, 1875, George B. Corkhill, clerk.

372 Afterwards, to wit, on the 13th day of October, 1875, the Delaware Railroad Construction Company, complainant, by J. M. Brayton, its att'y, filed in said clerk's office its motion to dismiss in said cause; which said motion is in the words and figures following, to wit:

373 *Motion to dismiss.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company and others, including William Dennison, trustee.

And now comes the said plaintiff and moves the court to dismiss this cause, and strike the same from the docket for want of jurisdiction, and assigns the following reasons:

1st. The application for removal to this court was not made until after one trial in the State court and after the commencement of the second trial.

2nd. The petition relied upon does not describe this suit and is not signed.

3rd. The bond relied upon does not describe this suit, does not
374 apply to it, and the security is neither good nor sufficient. No evidence was furnished to the State court that the petition and bond relied upon were intended for this suit, or that the parties were not all residents of Iowa.

5th. After the petition and bond relied upon for removal were filed, said Dennison waived removal by proceeding to trial in the State court, stipulating that judgment and decree should be entered of the May

term of said court, and after the same were entered, by appealing to the supreme court of the State of Iowa.

6th. Said Dennison failed to enter a copy of the record in this court until the second day of this term.

(Signed) J. M. BRAYTON,
Solicitor for Del. R. R. Construction Co., Pl'ff.

(Endorsed:) Del. R. R. Con. Co. vs. D., St. Paul R. R. Co. et al. Motion to dismiss. Filed Oct. 13, 1875. George B. Corkhill, clerk.

375 Afterwards, to wit, on the 19th day of October, the same being of the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

376 United States circuit court, district of Iowa, Tuesday, October 19, 1876.

DELAWARE RAILROAD CONSTRUCTION CO. *vs.* DAVENPORT AND ST. PAUL RAILROAD CO. ET AL. } No. 635. Eq.

This cause came on this day for hearing, on plaintiff's motion to dismiss this cause.

Pl'ff appears by J. M. Brayton, esq., and the trustees defendants by Grant and Smith.

And the court, after argument of counsel thereon, being fully advised, denies said motion, to which ruling the plaintiff at the time excepted.

377 On the 18th day of October, 1875, there was filed in said clerk's office in said cause an amendment to the transcript in said cause, which said amendment is in the words and figures following, to wit:

378 THE STATE OF IOWA,
Delaware County, ss:

Be it remembered that at a term of the circuit court of Iowa, holden in and for said county, at Delhi, on the 14th day of October, A.D. 1875, were present Hon. Sylvester Bagg, sole presiding judge, Abner Dunham, sheriff of said county, and J. B. Satterlee, clerk of said court, when the following proceedings were had, to wit:

THE DELAWARE RAILROAD CONSTRUCTION Company *vs.* THE DAVENPORT AND ST. PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

379 Now on this 14 day of October, 1875, this cause coming on for hearing upon the motion of the said defendant, William Dennison, trustee, to correct the record and decree entered in this cause at the May term, 1875, of said court, come the several parties—the plaintiff appearing by G. Wattson, esq., its attorney, and the defendant, William Dennison, trustee, by L. M. Fisher, his attorney—when, after hearing

the arguments of counsel, and the court being now fully advised in the premises, it is considered that said motion be sustained, and it is therefore ordered that the judgment and decree rendered in this cause at the May term, 1875, of said court commencing on the 19th day of May, 1875, be, and the same is, corrected, amended, and reformed, and ordered by the court to read & stand as the judgment and decree of this court in lieu of the judgment and decree rendered by this court as aforesaid as follows, that is to say:

And now on this 17th day of May, 1875, this cause coming on for hearing on the motion of plaintiff to strike from the files of this cause in this court the answer of defendant William Dennison, trustee, for
380 the want of verification, and the court being now fully advised in the premises, said motion is sustained, and the answer of said defendant, William Dennison, trustee, is stricken from the files in this cause.

Whereupon the said plaintiff by its attorney files a motion for default against said defendant, William Dennison, trustee, for want of answer herein.

And now further on the 19th day of May, 1875, this cause coming on for further hearing, comes the said defendant, William Dennison, trustee, and asks leave of court to file, and now files his amended answer.

And now further on the 21st day of May, 1875, this cause coming on for further hearing, comes Lewis H. Meyers, by Grant and Smith and L. M. Fisher, and asks to be made a party defendant in this cause, and calls up his motion for that purpose filed in this cause on the 19th day of May, 1875. Whereupon plaintiff by its attorney objects to said Meyer being made a party defendant in this cause for the reason that no
381 evidence of the appointment of said Meyer as trustee is before this court, and said motion and the objections thereto having been duly considered by the court, it is ordered that the application of said Meyer to be made a party defendant be refused, and the objections thereto be and they are sustained, to which ruling of the court said Meyer, be his counsel, excepts, and asks that his exceptions in this behalf be made a matter of record in this cause; which is accordingly done.

Plaintiff now offers in evidence the contract sued on in this cause. Whereupon the defendant, William Dennison, trustee, asks leave to file an amended petition and bond for the transfer of this cause to the United States circuit court, a petition and bond for that purpose appearing to have been filed with the clerk of this court on the 20th day of May, 1875, one of the regular days of the present term of court, to wit, the 20th day of the filing of the *sum* having been brought to the court. Plaint-
382 iff, by its attorney, objects that the bond is insufficient, one surety being an attorney and not eligible as a surety on a bond in court under the law, and further, that the application to transfer this cause is too late, the cause being now reached for trial and the trial of the same commenced. Whereupon the court sustains the objections of plaintiffs in this behalf, to which ruling of the court the defendant, William Dennison, trustee, by his counsel excepts, and asks that his exceptions be made a matter of record; which is accordingly done. When pending further proceedings in said cause court adjourns to May 22d, 1875.

And now on this 22d day of May, 1875, it being one of the days of the regular May term, 1875, of said court, the court proceeds with the further hearing of said cause, whereupon defendant, Dennison,

trustee, now moves the court to proceed no further with the trial of said cause, and asks that said defendant be allowed to file a new bond for the transfer of said cause to U. S. circuit court, or to deposit
383 money for costs of same. Plaintiff objects on the ground that the cause is now on trial on its merits. Objections sustained, and said defendant by his counsel excepts and asks that his exception be made a matter of record, which is accordingly done. Whereupon plaintiff, by its counsel, asks leave to file a reply, to the filing of which, defendant Dennison by his counsel, objects. Objection overruled, and defendant Dennison, by his counsel, excepts and asks that his exception be made a matter of record, which is accordingly done. Whereupon plaintiff files reply, and thereupon defendant Dennison, by his counsel, asks leave and files his amended answer. And the court now proceeds with the trial of said cause on the issues joined therein. And after full hearing and argument of counsel, the same is duly submitted to the court, and by consent of parties the court takes the same under advise-
384 ment with the understanding that judgment shall be rendered by the court in vacation, and entered as of the last day of this term.

And the court finds the issues in favor of plaintiff, and files and renders his decision that plaintiff's lien is paramount to that of defendant, and orders judgment in favor of said plaintiff.

It is therefore ordered and adjudged and decreed, that the lien of said plaintiff is paramount to that of the defendant William Dennison, trustee, &c. And it is ordered, adjudged, and decreed, that the former decree and judgment of this court, rendered at the May term, A. D. 1874, be confirmed, and that the plaintiff's claim for a mechanic's lien as prayed in his petitions, be established as against the said defendants upon the property described in the decree in this suit at the February term of this court, A. D. 1874, and as therein established against the Davenport and S't Paul Railroad Company, and that the defendants be forever barred and foreclosed of, and from all right of redemption
385 of, in, or to said property, and every part thereof. And that the rights of plaintiff be declared to be superior and paramount to any and all claims and rights of said defendants to the same or any part thereof. And that the defendant, William Dennison, trustee, &c., pay the costs of the retrial of this suit.

Thus ordered, adjudged, and decreed, this 14th day of October, A. D. 1874.

STATE OF IOWA,
Delaware County, ss :

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing is a full, true, and complete copy of the record of the proceedings in the above-entitled cause, at the October term, 1875, of said court, as full and complete as the same now remains of record in my office.

Witness my hand and the seal of said court, hereto attached, this 16th day of October, 1875.

386 [SEAL.] (Signed) J. B. SATTERLEE,
Clerk Circuit Court.

(Endorsed:) Delaware R. R. Construction Co. vs. Davenport and S't Paul R'y Co. Amendment to transcript. Filed Oct. 18, 1875. George B. Corkhill, clerk.

387 Afterwards, to wit, on the 14th day of January, 1876, the same being of the October term, 1875, of said court, there appears in the

records of the proceedings thereof in said cause the following entry, to wit:

388 United States circuit court, district of Iowa, Friday, January 14, 1876.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company et al. } No. 635. Eq.

In this case it is ordered that the time for taking testimony be extended to the first day of May, A. D. 1876, and that said cause stand continued.

All right.

GRANT & SMITH,
For Meyer & al.

389 On the same day, to wit, Jan'y 14, '76, there was filed in said clerk's office, in said cause, a stipulation of parties, which said stipulation is in the words and figures following, to wit:

390 *Stipulation.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

In this case it is agreed by the plaintiff, and L. H. Meyer, and William Dennison, trustees, that the issues in this case shall stand as it stood at the time of trial in the court below after the filing of petition for removal, but with Lewis H. Meyer, a defendant, joining in the answer of said Dennison; that is, the issue shall consist of the original, amended, and supplemental petitions filed in the Delaware circuit court; the amended answer of Dennison on pages Nos. 97, 98, and 99 of the record in this case and on page No. one hundred and two of said record, the reply on page 103, and that said Meyer shall be regarded as joining in said
391 answers, and that a general replication shall be considered as filed to said answers denying generally the allegations thereof.

But this agreement shall not preclude the parties from making any amendments to the issue in the same manner as they might if said issue had been made in this court. And this agreement shall not be regarded as a waiver of plaintiff's objections to the right of this court to try this case.

(S'g'd) GRANT AND SMITH,
For Meyer and Dennison.
" J. M. BRAYTON
For Delaware Railroad Construction Company.

(Endorsed:) Del. R. R. Con. Co. vs. D. and S't Paul R. R. Co. et al. Stipulation. Filed Jan'y 14, '76. Corkhill, clerk.

392 Afterwards, to wit, on the 16th day of May, the same being of the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

393 United States circuit court, district of Iowa. Tuesday, May 16, 1876.

DELAWARE RAILROAD CONSTRUCTION COMPANY *vs.* DAVENPORT & S'T PAUL RAILWAY CO. } No. 635. Eq.

This cause came on for hearing this day, and Meyer and Dennison, trustees, were given leave to file amendment to their answer.

394 On the same day, to wit, May 16, 1876, the said defendants, Meyer & Dennison, trustees, by their said att'ys, filed in said clerk's office an amendment to their answer in said cause, which said amendment is in the words and figures following, to wit:

395 U. S. C. C., D. I.

THE DELAWARE RAILROAD CONSTRUCTION Company *vs.* THE DAVENPORT AND S'T PAUL R. W. CO. and others. } No. 635.

Amendment to answer of Meyer and Dennison, filed in this cause in State court.

These defendants, by leave of court, further answering, say that when said contract of the Delaware R. R. Construction Co. was made (and until it was performed), one Doolittle, named in said paper, was a director of the Davenport and S't Paul Railway Company, and a director and stockholder in said Construction Company, and said contract was, as against the said trustees, creditors of the railway company, fraudulent in law, null and void, and ought not to be enforced in a court of equity.

(S'g'd) GRANT,
For Meyer and Dennison.

(Endorsed:) 635. Equity. Delaware R. R. Construction Company vs. Davenport and S't Paul Railway Co. and others. Amendment to answer of Meyer and Dennison. Filed May 16, 1876. E. R. Mason, clerk.

396 Afterwards, to wit, on the 24th day of May, 1876, said complainant, by its said att'y, filed in said clerk's office its motion to remand, which is in the words and figures following, to wit:

397 *Motion to remand.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

The plaintiff in the above-entitled suit moves the court to remand the above-entitled cause to the circuit court of Delaware County, Iowa, for want of jurisdiction thereof by this court, and assigns the following grounds therefor:

1st. Said suit was commenced in said Delaware circuit court, and was not removed to this court, nor was any petition or bond filed in or accepted by said Delaware circuit court for the removal of this suit to this court.

2nd. Said suit was not removable to this court, as it does not
398 and did not in said Delaware circuit court involve a controversy between citizens of different States.

3d. Said suit does not and did not in said Delaware circuit court involve a controversy between citizens of different States, which can be wholly determined between them.

4th. The petition relied upon is not signed, nor does said petition or the bond relied upon for the removal, properly describe this suit.

5th. The party applying for removal waived all right hereto by proceeding to trial in said Delaware circuit court and stipulating that that court might render a decree in said suit, and also appealing to the supreme court of Iowa from the decree so rendered after applying to that court for removal.

399 6th The application was made too late, being after decree rendered.

7th. Said Lewis H. Meyer was not a party to said suit.

(S'g'd) J. M. BRAYTON,
For the Delaware Railroad Construction Company.

(Endorsed :) 635. The Delaware R. R. Construction Co. vs. The Davenport and St. Paul R. R. Co. et al. Motion to remand. Filed May 24, 1876. E. R. Mason, clerk.

400 Afterwards, to wit, on the 25th day of May, 1876, there was filed in said clerk's office in said cause a stipulation of parties, which said stipulation is in the words and figures following to wit:

401 *Stipulation.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND ST. PAUL RAILROAD Company et al.

It is hereby stipulated by and between the plaintiff in the above-entitled suit and Lewis H. Meyer and William Dennison, trustees, defend-

ants in said suit, that the president of the Davenport and St. Paul Railroad Company in the year A. D. 1870 and subsequently had authority from said railroad company to make on behalf of that company contracts in relation to the construction of said railroad, and matters connected therewith, or to the proper removal thereof, dated May, A. D. 1876.

(Signed) GRANT,
For Pl'ff, Trustee.
J. M. BRAYTON,
For the Del. R. R. Con. Co.

(Endorsed:) The Del. R. R. Con. Co. vs. D. and St. Paul R. R. Co. et al. Stipulation 635. Filed May 25, 1876. E. R. Mason, clerk.

402 On the same day, to wit, May 25, '76, the said complainant by its said attorney filed in said clerk's office its exceptions to amendment to answer, which exceptions are in the words and figures following, to wit:

403 *Exceptions to amendment to answer of Meyer and Dennison.—Filed May*, 1876.

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

And now comes the said plaintiff and excepts to the amendment of Meyer and Dennison to their answer filed in this court at this May term, A. D. 1876, as follows:

1st. The fact, if true, that one Doolittle was a director in the Davenport and S't Paul Railroad Company and also in the Delaware Railroad Construction Company does not render the contract in this suit void, nor does it constitute an additional or any defense to plaintiff's claim, nor effects its rights under said contract.

404 2nd. Said amendment is not verified, while plaintiff's petition or bill of complaint is verified, and plaintiff has not waived the verification of any pleadings on part of defendants.

And plaintiff asks that these exceptions be allowed.

(Signed) J. M. BRAYTON,
For Plaintiff.

(Endorsed:) The Del. R. R. Con. Co. vs. D. and S't Paul R. R. Co. et al. 635. Exceptions to amendment to answer of Meyer and Dennison. Filed May 25, 1876. E. R. Mason, clerk.

405 On the same day, to wit, May 25, 1876, the said complainant by its said attorney filed in said clerk's office its replication in said cause, which said replication is in the words and figures following, to wit:

406 *Replication.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

Now comes the said plaintiff, The Delaware Railroad Construction Company, and saving and reserving all manner of advantage of exception to the manifold insufficiencies of the answers and amendment to answer filed herein by Lewis H. Meyer and William Dennison for replication thereunto says that the said answers and amendment thereto are insufficient in law to be replied unto, and that the matters and things therein stated are untrue, and complainant prays as by his former pleadings he has already prayed.

(S'g'd) J. M. BRAYTON,
For the Delaware Railroad Construction Company.

(Endorsed:) The Del. R. R. Con. Co. vs. D. and S't Paul R. R. Co. et al. Replication. Filed May 25, 1876. E. R. Mason, clerk.

407 Afterwards, to wit, on the 26th day of May, 1876, there was filed in said clerk's office a stipulation of parties in said cause, which said stipulation is in the words and figures following, to wit:

408 *Stipulation.*

In the circuit court of the United States for the district of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND ST. PAUL RAILROAD Company et al.

It is hereby stipulated by and between the plaintiff in the above-entitled suit and Lewis H. Meyer and William Dennison, defendants, that upon the trial of the above-entitled suit stipulation as to certain facts, made between said defendants and said plaintiff and the Delaware County Railroad Company, and filed in the suit in this court, entitled Moses De Witt Loomis et al. vs. The Davenport and St. Paul Railroad Company et al. may be used as admitted facts in this case, and that the depositions taken in that suit by the above-named parties to be used upon the issues between said parties may also be read by either party
409 upon the trial of this suit, subject so far as the same may be competent and relevant to this case; also the facts contained in the stipulation filed in said Moses De Witt Loomis' suit before J. B. Baggs, commissioner as to evidence of R. Eddy, the same as if testified to in this case.

Either party may also read the testimony of H. C. Jackson and F. B. Doolittle, taken upon the trial in the Delaware circuit court and included upon pages 119 to 124 inclusive and 129 to 133 inclusive of the record from the circuit court of Delaware County, Iowa, filed in this case, but

the same shall be subject to objections for incompetency and irrelevancy.

May 24, 1876.

(Signed) JAMES GRANT, *for Trustees.*
(") J. M. BRAYTON,
For Delaware Railroad Construction Company.

(Endorsed:) The Del. R. R. Construction Co. vs. D. and St. Paul R. R. Co. et al. Stipulation filed May 26, 1876. E. R. Mason, Clerk.

410 Afterwards, to wit, on the 29th day of May, the same being of the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

411 United States circuit court, district of Iowa, Monday, May 29, 1876.

DELAWARE RAILROAD CONSTRUCTION CO.
vs.
DAVENPORT AND ST. PAUL R. R. Co. } No. 635. Eq.

This cause came on this day for hearing and was submitted to the court upon the bill, answer, replication, and exhibits thereto, proofs, stipulations of parties, and arguments of counsel, J. M. Brayton appearing for complainant and James Grant for defendant, and the same was taken under advisement by the court.

412 Afterwards, to wit, June 8, 1876, the same being of the said May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

413 United States circuit court, district of Iowa. May term, 1876.
Thursday, June 8, 1876.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and Lewis H. Meyer, his survivor, and William Dennison, trustees of certain bondholders of the Davenport and S't Paul Railroad Company. } No. 635. Eq.

This cause transferred from the circuit court of Delaware County to this court came on now to be heard, Brayton for the plaintiff and Grant for the defendant, Meyer and Dennison, trustees, and the same is heard on the petition, answer, replications and evidence, and stipula-
414 tions of counsel filed in this court.

And thereupon it is adjudged and ordered that the judgment of the Delaware circuit court of 6 Feb'y, 1874, of 22 day, 1874, and of 21, 1875, and all other proceedings in said cause, which adjudge and establish a prior lien in said Davenport and S't Paul Railroad property in Delaware County against the trustees of said mortgage and said bondholders, is seta side, annulled, and declared for naught.

The decree rendered on default against said parties is set aside. The sale and all conveyances made under any of said judgments are set aside and cancelled, and declared to be of no validity against said trustees, and the mortgage given to secure said bondholders, which
415 mortgage is adjudged and decreed to be a prior lien on said prop-

erty to the claim of said Delaware Railroad Construction Company and its assignees.

And the said plaintiff is ordered and adjudged to pay all the costs, as well in this as the state court, which relate to the suit against the said trustees under said mortgage.

And thereupon said Delaware Railroad Construction Company prays that an appeal be allowed and granted to it from this decree and the orders made by this court in this cause to the Supreme Court of the United States, and said appeal is allowed and granted upon the conditions that said Delaware Railroad Construction Company file in this court a bond for said appeal in the penal sum of one thousand
416 dollars within sixty days from this date, to be approved by one of the judges of this court.

417 Afterwards, to wit, on the 13h day of July 1876, the said complainant, by its said attorney, filed in said clerk's office its appeal bond in said cause, which said appeal bond is in the words and figures following to wit:

418 Know all men by these presents that we, Samuel Allison and Riley Holdridge, residents of the county of Delaware and State of Iowa, are held and firmly bound unto Lewis H. Meyer and William Dennison, trustees and defendants in the suit hereinafter mentioned, in the full and just sum of one thousand dollars, lawful money of the United States, to be paid to said Lewis H. Meyer and William Dennison, trustees, or their certain attorney, successors, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this fifth day of July, A. D. 1876.

Whereas lately, at a term of the circuit court of the United States for the district of Iowa, in a suit depending in said court between the Delaware Railroad Construction Company as plaintiff, and said Lewis H. Meyer and William Dennison, trustees, as defendants, the suit
419 being entitled The Delaware Railroad Construction Company vs. The Davenport and S't Paul Railroad Company et al., a decree was rendered against the said plaintiff, The Delaware Railroad Constuction Company, on or about the 8th day of June, A. D. 1876, and the said Delaware Railroad Construction Company has appealed from said decree and every part thereof to the Supreme Court of the United States to be holden at Washington, on the second Monday of October next, to wit, October, A. D. 1876:

Now, the condition of the above obligation is such that if the said Delaware Railroad Construction Company shall prosecute said appeal to effect, and shall answer and pay all costs and damages that shall be adjudged or decreed against it, said plaintiff and appellant, and shall satisfy and perform the judgment and decree appealed from in case it shall be affirmed, and any order, judgment, or decree which said Supreme Court may render or order to be rendered by said circuit
420 court of the United States for the district of Iowa, and if said Delaware Railroad Construction Company shall make good its said appeal, and reverse said decree of said circuit court of the United States for the district of Iowa, then this obligation to be void; else to remain in full force and virtue.

(S'g'd) SAMUEL ALLISON, JR. [SEAL.]
RILEY HOLDRIDGE. [SEAL.]

Sealed and delivered in presence of—
J. B. BAGGS.
G. W. I. HAWES.

UNITED STATES OF AMERICA,
District of Iowa:

I, Samuel Allison, jr., being duly sworn, say that I am worth at least three thousand dollars beyond the amount of my debts, and have property in the State of Iowa, liable to execution, to the amount of one thousand dollars.

(S'g'd) SAMUEL ALLISON, JR.

Subscribed to and sworn to by Samuel Allison, jr., before me on the fifth day of July, A. D. 1876.

(S'g'd) J. B. BAGGS,
U. S. Commissioner for District of Iowa.

421 UNITED STATES OF AMERICA,
District of Iowa:

I, Riley Holdridge, being duly sworn, say that I am worth at least three thousand dollars beyond the amount of my debts, and have property in the State of Iowa, liable to execution, to the amount of one thousand dollars.

(Signed) RILEY HOLDRIDGE.

Subscribed and sworn to by Riley Holdridge before me this 5th day of July, A. D. 1876.

(S'g'd) J. B. BAGGS,
United States Commissioner for the District of Iowa.

The Delaware Railroad Construction Company having claimed and prayed an appeal to the Supreme Court of the United States from the said decree of said circuit court, which is allowed, the foregoing bond is approved by me as an appeal bond from said decree, on this 12th day of July, A. D. 1876.

(S'g'd) J. M. LOVE, *Judge.*

(Endorsed:) Filed July 13, 1876. E. R. Mason, clerk.

422 Afterwards, to wit, on the 2d day of August, 1876, the said complainant, by its said attorney, filed in said clerk's office, in said cause, their citation, the original of which is as follows, to wit:

423 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Lewis H. Meyer and William Dennison, trustees:

Whereas the Delaware Railroad Construction Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Iowa, made in your favor on or about the eighth day of June, A. D. 1876, in the suit in said circuit court entitled The Delaware Railroad Construction Company vs. The Davenport & S't Paul Railroad Company et al., said decree having been rendered in favor of you, Lewis H. Meyer and William Dennison, trustees, above named, and said plaintiff, the Delaware Railroad Construction Company, has given the security required by law: You are therefore hereby cited to appear before the said Supreme Court
424 at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises and show cause, if any there be, why said decree should not be corrected and why speedy justice should not be done in that behalf.

Given under my hand at the city of Keokuk in the district of Iowa, in the eighth circuit, this 12th day of July, A. D. one thousand eight hundred and seventy-six (1876).

J. M. LOVE, *Judge.*

We hereby admit the receipt of a copy of the above citation, and that due service of said citation was made upon us at the city of Davenport, in the State of Iowa, on this 28th day of July, A. D. 1876.

GRANT & SMITH,
Solicitors and Counsellors for Lewis H. Meyer and William Dennison, trustees and defendants in the suit named in said citation.

(Indorsed:) 635 Eq. Delaware R. R. Const. Co. vs. D. &. S't P. R'y Co. Citation filed Aug. 12, 1876. E. R. Mason, clerk.

425 In the circuit court of the United States for the district of Iowa.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of all pleadings, proceedings, record entries, final decree, and appeal-bond in a certain cause in said court, wherein the Delaware Railroad Construction Company was plaintiff and the Davenport & S't Paul R. R. Co. et al. are defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office. I further certify that the original citation, with return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 3d day of October, A. D. 1876.

[SEAL.]

EDWARD R. MASON,
Clerk U. S. C. C. District of Iowa.

426 *Stipulation.*

In the Supreme Court of the United States.

THE DELAWARE RAILROAD CONSTRUCTION Company, appellant,
vs.
LEWIS H. MEYER & WILLIAM DENNISON, trustees, apellees.
} No. 775.

It is hereby stipulated by and between the Delaware Railroad Construction Company, appellant in the above-entitled suit, and Lewis H. Meyer and William Dennison, trustees, defendants and appellees in said suit, that the stipulation of facts made by said Lewis H. Meyer and William Dennison and the said Delaware Railroad Construction Company and the Delaware County Railroad Company, and filed in the suit of Moses De Witt Loomis et al, vs. the Davenport & S't Paul Railroad Company et al., being case No. 552 in the circuit court of the United States for the district of Iowa, and the depositions of Hiram Price and of the various witnesses whose testimony was taken before J. B. Baggs, U. S. commissioner, and filed in said suit No. 552, constitute and were a part of the evidence in said suit No. 775 (which was No. 635 in the
427 U. S. circuit court of the district of Iowa), and was received on the trial thereof.

It is further stipulated that the clerk of said circuit court shall make out a transcript of the above-described evidence, to wit, said stipulation of facts, and of said depositions, annex thereto a proper certificate made by him and this stipulation, and forward the same to the clerk of said supreme court, to be by him filed in said suit No. 775, and the same shall constitute a part of the record of that case in the same manner as if it had been sent up with the record now on file therein, or as if sent up under a writ of certiorari therefor issued by that court, and shall be printed with the record now filed in said court.

Dated May 18, 1877.

GEO. G. WRIGHT,
For Appellant.
JAMES GRANT,
For Trustees & Appellees.

428 I, Edward R. Mason, clerk of the circuit court of the United States in and for the district of Iowa, in accordance with the annexed stipulation of parties, do hereby certify and return that hereto attached are full, true, and complete copies of the stipulations of facts in a certain cause numbered 552, wherein Moses De Witt Loomis et al., including Lewis H. Meyer and William Dennison, trustees, are plaintiffs, and the Davenport and S't Paul Railroad Company et al., including the Delaware Railroad Construction Company and the Delaware County Railroad Company, are defendants, and of the depositions of Hiram Price and others, being the witnesses described in said annexed stipulation in a certain cause numbered 552, wherein the Delaware Railroad Construction Company is plaintiff and the Davenport and S't Paul Railroad Company et al. are defendants, as full, true, and complete as the originals of the same remain of record in my office.

429 I also certify that this additional transcript, and the transcript heretofore certified and sent by me to the clerk of the Supreme Court of the United States, of the record in said suit includes copies of all the evidence filed in said suit or used upon the trial thereof in said circuit court of the United States.

Witness my hand and the seal thereof, at Des Moines in said district, this the 25th day of September, 1877.

[SEAL.] E. R. MASON,
Clerk.

430 In the circuit court of the United States for the district of Iowa

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

It is hereby stipulated and agreed by and between Lewis H. Meyer and William Dennison, trustees, complainants in the above-entitled cause, by Grant and Smith, their solicitors, and the Delaware Railroad Construction Company and the Delaware County Railroad Company, defendants, by J. M. Brayton, its solicitor, that the testimony of the following witnesses, all residing upwards of one hundred miles from the city of Des Moines, Iowa, viz: R. Boon, C. F. Fleming, R. Eddy, J. M. Holbrook, Henry Harger, A. E. Martin, F. B. Doolittle, H. C. Jackson, shall be taken before J. B. Boggs, a United States commissioner in and for the district of Iowa, on the 15th day of March, to begin at

431 three o'clock p. m. on said day, and to continue until said testimony shall be completed.

The testimony of the said witnesses to be read in evidence by either of the parties hereto in the trial of the above-entitled causes.

Dated March 15, 1876.

GRANT & SMITH,
J. M. BRAYTON,
Sol. for Del. Co. R. R. Co. & Del. Co. R. R. Con. Co.

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
DAVENPORT AND S'T PAUL R. R. COMPANY et al.

STATE OF IOWA,
County of Delaware :

Be it remembered that on the 15th day of March, A. D. 1876, at three o'clock p. m., at the village of Delhi, in said county, before me, a
432 commissioner appointed by the circuit court of the United States within and for the district of Iowa, under and by virtue of the annexed agreement, were produced and personally came before me the following-named persons, to wit:

J. M. Holbrook was called as witnesses in behalf of the parties name in said stipulation to depose in the above-entitled cause, being the cause mentioned in annexed stipulation, and whose testimony is alleged*ed* to be material and necessary in said cause. And the said witnesses, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on their respective corporal oaths to testify the whole truth touching the matters in controversy in said civil cause, respectively depose and say as follows:

Deposition of J. M. HOLBROOK, a witness produced and sworn on behalf of the defendant.

433 Interrogatory 1st. What is your name, age, and place of residence, & occupation?

Ans. My name is J. M. Holbrook; my age is forty-five years; my residence is at Delhi, Iowa; my occupation is that of county treasurer of Delaware County, Iowa.

Int. 2d. State whether or not you are a member of the Delaware County Railroad Company.

Ans. I am.

Inter. 3d. Who is president of that company?

Ans. I am.

Int. 4th. How long have you had that office?

Ans. Since about the 18th of January, A. D. 1875.

Int. 5th. Have you any knowledge of the purchase of any railroad property by said company?

Ans. I have.

434 Int. 6th. State what that property was.

Ans. The interest that the Delaware Railroad Construction Company had in the Davenport and S't Paul Railroad.

Int. 7th. What property did that include?

Ans. It included that part of the Davenport and S't Paul Railroad lying in Delaware County, Iowa.

Int. 8. Who acted for the Delaware County Railroad Company in that purchase?

Ans. I did.

Int. 9th. Will you state the consideration on the part of the Delaware County Railroad Company?

Ans. The consideration was promissory notes. I cannot tell the exact amount, but it strikes me it was about or rising thirty-three thousand dollars.

435 Int. 10. Will you state what occurred at the purchase of the property?

Ans. I, as president of the Delaware County Railroad Company, made the offer, and M'r Eddy, on the part of the other company, accepted it.

Int. 11. State what the offer was.

Ans. It was these promissory notes I spoke of and a company note, the amount of which I do not remember.

Int. 12. State what was said at the trade.

Ans. I do not remember all that was said. I made the offer and he accepted it.

Int. 13. After he accepted the offer what occur'ed?

Ans. I passed over the consideration and he passed the deed and certificate of sale.

Int. 14th. What deed was passed over?

436 Ans. A sheriff's deed to that portion of the Davenport and S't Paul Railroad situated in Delaware County; also a sheriff's certificate of sale for the same.

Int. 15th. Do you know to whom the sheriff's deed was made, to the old company, M'r Eddy, or some one else?

Ans. I do not recollect. It was made to M'r Eddy as trustee of the Delaware Construction Company.

Int. 16th. State whether or not a deed was executed to the Delaware County Railroad Company.

Ans. I think there was. I think it was executed by R. Eddy as trustee of the Delaware Railroad Construction Company.

Int. 17th. State whether or not the note given by the Delaware County Railroad Company at the time of the purchase has been paid.

(Question objected to by plaintiff on the ground that the same
437 is leading, and assumes facts not proven.)

Ans. Some of it is. Am not certain how much is.

Int. 18th. Do you know whether or not the note has been taken up?

Ans. I think it has.

Int. 19. How was it taken up?

Ans. I think it was taken up by taking up the notes, or paying the indebtedness of the old company.

Cross-examined by plaintiff's att'y:

Int. 1st. You have been president of the Delaware County Railroad Company since its organization, have you not?

Ans. Yes.

Int. 2d. When was that company organized?

Ans. Some time about the 18th day of January, 1875.

Int. 3d. This company was organized as a corporation under
438 the laws of Iowa, was it not?

Ans. It was organized as a railroad company. I don't know whether you consider it a corporation; I suppose so.

Int. 4. You filed the articles of incorporation with the recorder of Delaware County, Iowa, did you not?

Ans. I think we did. I think it was done, but who did it I do not recollect.

Int. 5th. When were they filed with the recorder?

Ans. At the time of organization of the company, or soon after.

Int. 6. Do you recollect the names of the incorporators?

Ans. I may not recollect them all. I do some of them. The names as I recollect are R. Eddy, J. M. Brayton, Benjamin Thorpe, C. F. Flemming, R. Boon, A. E. Martin, Charles Harger, Henry Harger, J. M. Holbrook.

439 Int. 7. The first election of officers was on the 18th of January, A. D. 1875, was it not?

Ans. It was about that time I think; it was on the 18th.

Int. 8. What members of the Delaware County Railroad Company were present at that election?

Ans. All the members of the company.

Int. 9. Who drew up the articles of incorporation of that company?

Ans. I don't know.

Cross 10. Did not you see the articles?

Ans. I did. I think M'r Brayton drew them.

Cross 11. Have you conversed with Judge Brayton as to the interest acquired by the Delaware Railroad Construction Company on the Davenport and S't Paul Railroad in Delaware County under the sale to R. Eddy, as trustee of the Delaware Railroad Construction Com-

439½ pany in May, 1874, previous to the organization of the Delaware County Railroad Company?

Ans. I think I have, but can't swear positive.

Cross 12. Did Judge Brayton ever speak to you of this clause in the contract of Delaware Railroad Construction Company with the Davenport and St. Paul Railroad Company, viz: "all the money for work hereinbefore specified to be paid by the citizens of Delaware County, previous to the organization of the Delaware County Railroad Company"?

Ans. No, sir; I think not.

Cross 13. Did you know anything of that clause previous to that time?

Ans. No, sir.

Cross 14. When did you first hear of that clause?

Ans. I can't tell exactly, but some time within the last six months.

440 Cross 15. You did not hear of it then at the time Denison made his motion for a new trial?

Ans. I did not.

Cross 16. Did you know that at the time the judgment was rendered against Denizon and Thompson it was by default, and did you not know the fact before the purchase by the Delaware County Railroad Company?

Ans. I did not.

Cross 17. Did you not know before said purchase that Denizon had a right to a new trial?

Ans. I did not.

Cross 18th. Then you had no knowledge up to the time of said purchase of any defense of the Davenport and St. Paul Railroad bondholders against the action of said construction company?

Ans. At the time the purchase was made I did not know of any

441 defense said bond holders had. I had heard that there had been litigation about the matter before that. I did not know the condition of *of* the litigation at that time or that there was any.

Cross 19th. When was this purchase made by the Delaware County Railroad Company?

Ans. I think it was right away after the organization of the company. I think the next day, or such a matter. I will not swear positive that it was next day, but am positive it was within three days.

442 Cross 20. What members of the Delaware County Railroad Company were present at the time of the purchase?

Ans. M'r Eddy, myself, and M'r Brayton, but I can't say whether M'r Martin was or not; do not remember as to any others.

Cross 21. What authority had you to make this purchase?

Ans. I was authorized by the board of directors of the Delaware County Railroad Company to do so.

Cross 22. When was that authority given?

Ans. I can't tell the date, but think it was the same day the company was organized, or the next day.

(It is now agreed that the evidence of this witness be taken in narrative form till objection is made.)

I think all the members of the Delaware County Railroad Com-
443 pany were present at the time the resolution was passed authorizing me to make the purchase, but cannot say certain. Judge Brayton, I think, was present. I do not recollect who drew the resolution, but rather think it was in Judge Brayton's handwriting.

Judge Brayton was here at the time and took part in the deliberations and made suggestions as he does at all meetings.

I do not know as Judge Brayton's opinion was asked as to legal matters growing out of this transaction. I did not hear it. I do not know that Judge Brayton's opinion was given to the board of directors about these matters. If it was given, I did not know of it. I was present at the time the resolution was passed and authority was given. I think all the time. The meeting at the time of the organization and also the meeting at the time the resolution was passed were held at the office of Judge Brayton. I do not know who drew the deed to the Delaware County Railroad Company. I think very likely Judge Brayton
444 did, but don't know. I do not know who wrote the assignment to the certificate of sale. I do not know that the deed was examined by anybody or any lawyer. I do not know that our board got the opinion of any lawyer as to the validity of the deed or assignment. They may have done so without my knowledge.

There was a meeting of the Delaware Railroad Construction Company about the time the resolution was passed authorizing me to *to* purchase the road; can't say whether it was the same day or not. It was held at the office of Judge Brayton. I was not present at the meeting of the Delaware Railroad Construction Company.

At the time the deed was passed over the notes duly executed were passed to M'r Eddy. I cannot tell when the thirty-three thousand dollars in notes become due. I cannot say when the note of the Delaware County Railroad Company become due

445 The business of the purchase was done at the office of Judge Brayton. I do not know the time that the notes of the Delaware County Railroad Company was taken up with notes of the construction company, but it was some time last summer or fall. The new company bought the notes of the old company by giving new notes of the Delaware County Railroad Company.

The object of the organization of the Delaware County Railroad Company was to make money, I expect.

I do not know why the old company sold its interest. They never discussed that matter in my hearing.

From the time of the organization up to the time of the death of Charles Harger, in June, 1875, I was the president, Charles Harger was the secretary, and Henry Harger was the treasurer of the Delaware County Railroad Company. The president, secretary, and treasurer owned each only one share in said company. I do not know the total number of shares owned by the members of the old company.

446 Upon reflection I think there are three hundred and sixty-three shares of stock of the par value of one hundred dollars each. I think the smallest number of shares owned by any individual member of the company, except the president, secretary, and treasurer, is thirty shares. All the members of the Delaware County Railroad Company at its organization except the president, secretary, and treasurer, were members of the Delaware Railroad Construction Company, as I understand it.

I know of no other reason why these three members owning only one share each were elected president, secretary and treasurer other than they were the best men for the position.

I do not know that any reason was ever given at the time of the election for electing said men to said officers by any members of the company.

The last meeting of board of directors of the railroad company was held at Mr. Hager's office, the former meetings were held at Judge Brayton's office. There have been about four meetings held in all.

447 My impression is that a majority or nearly all the members are generally present and take part in the deliberations at the meetings of the board of directors.

I have not acted very extensively in the management of the affairs of the company; I suppose the board of directors have had most to do with the management; I do not know, but that is my impression; I do not know that Judge Brayton has been very active in the management of the affairs of the company; Judge Brayton has been acting as attorney, I suppose, under directions of the board of directors.

I do not know that Judge Brayton has been very active at the meetings of the board of directors.

When the company met at Harger's office, they adjourned and *and* the board of directors remained and no person else. I think that meeting was held sometime last summer, can't say positive what time.

448 I do not know that Judge Brayton took a very active part at the meetings of the board of directors; he was generally around and talked some.

Whereupon it is ordered that further proceedings in regard to taking testimony be adjourned till March 16th, 1876, at 8½ o'clock a. m.

MARCH 16th, 8½ o'clock a. m.—J. M. Holbrook appears and proceeds with his testimony as follows, to wit:

Redirect examination:

I do not know of F. B. Doolittle being present at any of the meetings of the Delaware County Railroad Company or of the board of directors of said company.

J. M. Brayton is the attorney for the Delaware County Railroad Company. I think the president employed him under the direction of the board of directors.

The occasion of J. M. Brayton being employed was that there was

litigation to be attended to, the nature of which I do not know. The object of the litigation was to get possession of the railroad.

449 I think J. M. Brayton was employed by the Delaware County Railroad Company about the last of July or first of August, A. D. 1875. I do not know his being employed before that *that* time. I have been treasurer of Delaware County eight or nine years. I have collected and paid out taxes voted under the laws of Iowa by citizens of Delaware County to aid in the construction of the Davenport and S't Paul Railroad since 1870. I paid said taxes to F. B. Doolittle, assistant treasurer of the Davenport and S't Paul Railroad Company, on the order of the president of said company. I have the orders. (Witness produces orders, copies of which are hereto attached, marked Exhibits A & B.)

Recross-examination:

I think there was a resolution of the board of directors authorizing me to employ Judge Brayton as attorney. I think it was made at one of the meetings last summer. This was the first formal employ-

450 ment of Judge Brayton that I know of. Judge Brayton may have given legal advice to the company or its officers before that time, but not to my knowledge. I do not know whether any deed or assignment was made by or to the railroad company without the advice of Judge Brayton, nor with the advice and approval of Judge Brayton.

All the recording was done under the direction of the board of directors, I suppose. I did not know that the deed from the sheriff of Delaware County to the railroad company was recorded twice. I do not know that it was done under the advice of Judge Brayton. I know of no supposed irregularity in the first recording of that deed. I do not know whom the directors authorized to record the deed and assignment.

My impression is that the railroad company held their meetings, and afterwards the board of directors would hold theirs.

I do not know whether the company at all times held meet-

451 ings on the same day the board of directors held theirs. I do not but the directors held meetings when the railroad company did not. I do not remember how many meetings the railroad company have had, but I think more than four. Can't say positively how many.

There was not always a meeting of the board of directors when there was a meeting of the railroad company. I do not know how many meetings of the board of directors were held at the same time that a meeting of the company was held. They were sometimes held at the same time or immediately following each other. Can't say that they were generally.

Can't state approximately when Warren A. Brayton became a stockholder in the company.

The total amount of taxes collected by me and paid over to the Davenport and S't Paul Railroad Company on orders marked Exhibit A & B was twenty-three thousand two hundred and seventy-nine and $\frac{63}{100}$ dollars, and said money was paid at the times in *in* sums as shown by

452 statement produced by witnesses, which is hereto attached and marked "Exhibit C." There is still some taxes uncollected, the collection of which is enjoined and is still in litigation.

(S'g'd) J. M. HOLBROOK.

453 EXHIBIT A.

OFFICE OF THE DAVENPORT
AND S'T PAUL RAILROAD COMPANY,
No. 42 Brody street, Davenport, Iowa, Feb'y 24th, 1871.

To the treasurer of Delaware County, Iowa:

SIR: You are hereby authorized and requested to pay to J. B. Doolittle, esq., of Delhi, as assistant treas. of the Davenport and S't Paul R. R. Company, any money which may be in your hands now or at any subsequent time to which the Davenport and S't Paul R. R. Company may be entitled under section 3 of chap. 102 of the acts of the 13th general assembly of the State of Iowa.

Very respectfully, &c.,

H. PRICE,
Pres't Davenport & S't Paul R. R. Co.

454 EXHIBIT B.

OFFICE OF THE DAVENPORT
AND S'T PAUL RAILROAD COMPANY,
No. 42 Brody street, Davenport, Iowa, Feb'y 18th, 1871.

J. M. HOLBROOK, Esq.,
Treasurer of Delaware County:

Please pay to F. B. Doolittle, esq., ass't treas., all taxes collected and in your hands belonging to the Davenport and S't Paul R. R. Company, when he shall produce such vouchers and certificates as the law requires.

Very respectfully, &c.,

H. PRICE,
Treas. Dav. & S't Paul R. R. Co.

455 EXHIBIT C.

Delhi R. R. fund.

March 2, 1871.	By paid F. B. Doolittle, ass't treas. D. & St. P. R. R.	$3,651 17
April 25, "	" " " " " " "	2,144 67
May 22, "	" " " " " " "	1,223 19
June 7, "	" " " " " " "	1,273 71
July 3, "	" " " " " " "	1,568 69
Aug. 22, "	" " " " " " "	1,454 54
Oct. 12, "	" " " " " " "	1,461 00
Dec. 7, "	" " " " " " "	1,217 68
Apr. 3, 1872.	" " " " " " "	302 25
June 17, 1873.	" " " " " " "	137 88
Dec. 25, "	" " " " " " "	143 64
		$14,578 42

South Fork R. R. fund.

21 Feb'y, 1871.	By paid F. B. Doolittle, ass't treas. D. & St. P. R. R.	591 00
25 "	" " " " " " "	515 24
7 Dec., "		6,022 95
3 Feb'y, 1874.		1,571 42
		8,700 61

Total Delhi	14,578 42
" South Fork	8,700 61
Grand total	23,279 03

456 RENSSALAR EDDY, being next produced as a witness in said cause on part of plaintiff, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes and says as follows:

(It is agreed that the testimony of this witness be taken in narrative form until objection is made.)

My name is Renssalar Eddy; my age, sixty years; I reside in Delhi, Iowa; occupation, lumber and grain dealer.

I am one of the original incorporators and stockholders in the Delaware Railroad Construction Company, and am a stockholder therein at the present time, and have been a stockholder from its organization.

I held the office of president of said company from 1870 till some time in 1873, and from that time till the present time I have been treasurer, and all the time I have been a director of the company.

457 I am also a stockholder of the Delaware County Railroad Company. I own fifty-five shares in said railroad company. All the members of the Delaware Railroad Construction Company except F. B. Doolittle own the same number of shares in the Delaware County Railroad Company that I do. The reason for the organization of the Delaware County Railroad Company was that we could not under the articles of incorporation of the Delaware Railroad Construction Company operate a railroad. We thought if the road was not redeemed, we could join with the road above here and operate the road.

I was present at the time of the organization of the Delaware County Railroad Company. My best recollection is that it was organized on the 18th day of January, 1875.

I think that the resolution of the board of directors of the Delaware Railroad Construction Company authorizing the sale of their interest in the Davenport and St. Paul Railroad was passed on the even-

458 ing of the 18th of January, A. D. 1875.

I was not present at the time the resolution was passed authorizing the purchase of the interest of the Delaware Railroad Construction Company in the Davenport and St. Paul Railroad by the Delaware County Railroad Company.

I think said resolution was passed on the 18th of January, 1875. The railroad company was organized in the forenoon. I think the board of directors of the new company were elected in the forenoon.

I went home. I was informed after I got home, by Mr. Martin, that there was to be a meeting in the evening of that day of the board of directors or of the railroad company, I can't say which. In the evening I came up and found J. M. Holbrook and all the other members of the new company present. I think J. M. Brayton was present. The meeting was at judge Brayton's office.

After I came, I, with the members of the board of directors of the construction company, went into the back room of judge Bray-

459 ton's office to transact some business for said company. There might have been some discussion about the sale in the front room before we retired to the back room, but I can't say positively. The first I now remember about the proposition to sell occurred in the back room, after we retired to that room.

I never had any conversation with either of the Hargers or Holbrook, in relation to said sale, before the offer was made, that I recollect of. I do not know who drew up the offer. I do not know who drew the deed from R. Eddy, trustee, to the Delaware County Railroad Company. I do not know who drew the assignment of sheriff's certificate. I do not

know who drew the sheriff's deed to the railroad company, but think the sheriff did it. I did not draw any of these papers. I do not know of any person being paid for so doing except for the sheriff's deed to the construction company, and the sheriff was paid for that. I do not know whether I had any conversation with Mr. Thorpe and Mr. Boon
460 in relation to the clause of construction companie's contract in relation to the work being paid for by citizens of Delaware County, but presume I have; that matter was talked of some among the members. I think probably I have conversed with one or both of them in relation to that clause; am not certain.

The consideration paid the construction company for its interest in the railroad by the Delaware County Railroad Company was fifty-three thousand nine hundred and seventy-four and $\frac{73}{100}$ dollars. I think this amount was ascertained by computing the interest at ten per cent. from the time of the sale by the sheriff till the time of the sale to the Delaware County Railroad Company, and adding to the principal, and then the amount of the claim of Denton and Company was deducted. The consideration for the sale to the Delaware County Railroad Company consisted of the notes of the members of the railroad company for the par value of their stock, amounting to the sum of thirty-three
461 thousand two hundred dollars, and there was another note given by the Delaware County Railroad Company to the construction company for the amount of the balance of the sale. I am not certain when the stock notes of the individual members became due. My impression is that it was in June or July, 1875. None of those notes are now in my hands; I did keep the custody of them until they became due. The Delaware Railroad Company's note came due at the same time, I think. The last mentioned note was taken up by the company by paying up the indebtedness of the old company to that amount.

The old company had given notes to subcontractors for the 20 per cent. remaining back, and the new company took up those notes, to the amount of the note they had given, and exchanged them for said note.

I think the notes given to subcontractors by the construction company were in form of an ordinary promissory note, and were not
462 endorsed by any of the individual members of the construction company.

The notes given to the subcontractors were taken up by the Delaware County Railroad Company to the amount of the note of the Delaware County Railroad Company, by giving to said subcontractors the notes of the said railroad company for like amount.

One small note of thirty or forty dollars was taken up with money, which was the only one on which the money was paid.

I think the notes were taken up in June or July last. Am not certain. I cannot tell whether the notes were overdue or not.

All the notes given by the railroad company on the purchase of the railroad were fully executed at the time the deed was delivered, to wit, on the 19th of January, 1875, that being the time the deed was delivered.

I have stated all the consideration that passed from the Delaware County Railroad Company to the Delaware Railroad Construction
463 Company for its interest in the Davenport and S't Paul Railroad. I never have seen any money pass as a consideration between those companies.

(Witness is shown a sheriff's certificate of sale, a copy of which is hereto attached and marked "Exhibit D"; also the assignment on the back of the same. Witness is also shown a deed, a copy of which is hereto attached and marked "Exhibit E.")

Witness says he is acquainted with the handwriting of J. M. Brayton, and that all of said instruments are in said Brayton's handwriting, and he believes said Brayton drew them, except the signatures of the makers and public officers appearing thereon.

Cross-examination:

I think, when the contract come back, there was some talk among the members of the construction company about the clause in the contract of the construction company with the Davenport and S't Paul Railroad Company refer'ed to in my direct examination. I can't say whether it was at that time or afterwards.

464 It might have been before or about the time the clause was stricken out or abrogated; I can't remember; I don't remember any particular conversation I have had with M'r Thorpe or M'r Boon in relation to that matter.

The construction company never did collect or claim the right to collect any money from the citizens of Delaware County, as far as I know.

I paid my stock subscriptions to the Davenport and S't Paul Railroad Company, to F. B. Doolittle, as assistant treasurer and collector of the Davenport and S't Paul Railroad Company, and have known others to do so.

The notes that were given by the construction company to the subcontractors, refer'ed to in my direct examination, were the ordinary promissory notes of the company, as I understand.

Int. 1st. Did you understand that the notes taken up by the Delaware County Railroad Company were bought by that company?

(Plaintiff objects to the question on the ground that the question
465 asks the witness for conclusions of law and not facts.)

Ans. I suppose so.

Int. 2nd. How did the Delaware County Railroad Company pay for the notes bought of the subcontractors?

(Plaintiff objects to the question for the reason that the question calls for a conclusion of law.)

Ans. With new notes of the Delaware County Railroad Company.

Cross 3rd. Who held the notes taken up by the railroad company from the subcontractors?

Ans. I suppose the officers of the Delaware Railroad Company.

Cross 4th. Who owned those notes?

(Objected to by plaintiff for the reason that the question calls for conclusions of law, not facts.)

466 Ans. They belonged to the Delaware County Railroad Company.

Cross 5. Has the note of the Delaware County Railroad Company held by the construction company been paid?

(Objected to by the plaintiff for the reason that the question calls for conclusions of law.)

Ans. Yes.

Cross 6. How?

(Same objection for same reason.)

Ans. By taking up the indebtedness of the old company by the Delaware County Railroad Company. In other words, the directors of *of* the old company took the notes given to the subcontractors that had been taken up by the Delaware County Railroad Company from said company in payment of the note given by said railroad company to said construction company. The construction company, of which I was a
467 director, accepted these notes in payment of said note given by said railroad company.

I do not recollect the form of the subscription to the new company or whether there was more than one paper.

At the time of the organization, the members executed to the railroad company their promissory notes in payment for their subscription to stock. To the best of my knowledge, on the 19th day of January, 1875, thirty-three thousand two hundred dollars of these notes and the note of the railroad company were received by me for the construction company in payment for the interest of the construction company in the Davenport and S't Paul Railroad at the same time the deed was delivered.

I did, for the construction company, accept those notes in payment for the interest of the construction company in the Davenport and S't Paul Railroad.

All of the various notes I have mentioned were promissory notes.

Redirect:

468 At the time F. B. Doolittle collected the taxes and subscription for the Davenport and S't Paul Railroad Company, as assistant treasurer and collector of said company, he was treasurer of the Delaware R. R. Construction Company. Some of the money so collected by Doolittle was paid to the construction company, but not all of it; am certain not all of it.

I did not know that the railroad company had taken up the notes given to the subcontractors until they were ready to exchange the said notes for their note.

I was authorized by resolution of the board of directors of the construction company to take the notes given by the construction company to the subcontractors and held by the railroad company in payment of their note.

My reason for saying that the notes of thirty-three thousand two hundred dollars given by the members to the railroad company *to the railroad company* for their stock were taken by me in part payment for

469 the interest the construction company had in Davenport and St. Paul Railroad is because I was authorized so to do by resolution of the board of directors of the construction company. I did not know of a motion for a new trial being made in said matter at the time the sale was made. I thought the litigation was all over.

I knew some time after that a motion for a new trial had been made. I might have known in January, A. D. 1875.

Recross:

In the various conversations I have had with members of the company or other parties I have never had a doubt, or heard one expressed, as to the validity of the mechanic's lien, except from counsel for plaintiff.

The reason that the Delaware County Railroad Company was organized, as far as I know or have heard expressed, was that the old company, under its articles of incorporation, could not operate a railroad. I do not claim to know the motive of each individual member. I did not hear all the members express themselves.

Redirect:

(S'g'd) R. EDDY.

470 EXHIBIT D.

Certificate of sheriff's sale.

To whom it may concern:

I, Abner Dunham, sheriff of Delaware County, Iowa, hereby certify that by virtue of a writ of special execution to me directed, dated Feb-

ruary 17th, A. D. 1874, and issued out of the clerk's office of the circuit court of the State of Iowa, in and for Delaware County, upon a judgment and decree rendered in said court on the 6th day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company and against the Davenport and St. Paul Railroad Company, for the sum of fifty-one thousand nine hundred and thirty & $\frac{54}{100}$ dollars debt, and one hundred and twenty-one $\frac{30}{100}$ dollars cost, I did, on the 17th day of February, A. D. 1874, levy upon the following described property, to wit:

All that portion of the Davenport and St. Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of
471 way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title and interest of the said Davenport and St. Paul Railroad Company in and to the land upon which the said improvements are situated, as the property of the said Davenport and St. Paul Railroad Company, to satisfy the said special execution, amounting to fifty-one thousand nine hundred and thirty & $\frac{54}{100}$ dollars debt, and one hundred and twenty-one $\frac{30}{100}$ dollars costs, together with interest and accruing costs thereon. That I gave four weeks' notice of the time and place of selling said above described property under said execution, by posting up three notices thereof at three public places in said county, one of which was at the court house in Delhi, where the last district court was held, and by causing two publications of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi, in said county, immediately before the time of sale.

472 That in pursuance of the notice of sale aforesaid, in conformity to law, and by virtue of said special execution, I did, on the 4th day of May, A. D. 1874, at 10 o'clock in the forenoon of said day, at the door of the court house in Delhi, expose and offer the said property for sale at public auction, and R. Eddy, treas. of said plaintiff, in trust for said plaintiff, then and there bid the sum of fifty-three thousand & one hundred dollars for the same, and that being the highest and best bid offered for said property, the same was then and there * * * struck off and sold to the said R. Eddy, treas. of plaintiff, in trust for said plaintiff * * * sum of $53,100.53 *dollars*, who then and there paid the amount of his bid to me in cash. * * * Unless redemption is made within one year after the date of said sale, according * * * the said R. Eddy, treas., in trust as aforesaid, his heirs or * * * will be entitled to a deed for the said property sold as aforesaid and described as follows, to wit:

All that portion of the Davenport and St. Paul Railroad lying
473 between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said ground and buildings, and all the right, title and interest of the said Davenport and St. Paul Railroad Company in and to the lands upon which the said improvements are situated.

In witness whereof I have hereunto set my hand this 4th day of May, A. D. 1874.

ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

For value received I hereby assign to the Delaware County Railroad Company all my right, title and interest to the within-described property, and certificate and all the right, title and interest of the Del. Railroad Construction Company thereto this January 20th, 1875.

R. EDDY,
Trustee for the Del. Railroad Construction Co.

474 (Endorsed:) Certificate of sheriff's sale. Sheriff of Delaware County to R. Eddy, treas., in trust for Del. R. Con. Co. Deed made to the Delaware Co. R. R. Co., May 10, 1875. Abner Dunham, sh'ff Del. Co., Iowa.

475 EXHIBIT E.

Know all men by these presents that I, Rensselaer Eddy, treasurer of the Delaware Railroad Construction Company, and trustee for said company of the following described property, for the consideration of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the Delaware County Railroad Company the following described property, to wit: All that portion of the Davenport and S't Paul Railroad situated in Delaware County, Iowa, being the part lying between the north and south lines of said Delaware County, as said road is laid and operated, including the right of way, the road-bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest conveyed or received by me in or to the land upon which said improvements are situated by virtue of
476 a sale to me by the sheriff of Delaware County, Iowa, on the 4th day of May, A. D. 1874, under an execution against the Davenport and S't Paul Railroad Company, and I sell and convey to said Delaware County Railroad Company all the interest in or to any property derived by me at said sale, both legal and equitable, to have and to hold unto itself and its grantors forever.

Witness my hand this 19th day of January, A. D. 1875.

RENSSELAER EDDY,
Treasurer and Trustee of the Delaware Railroad Construction Company.

STATE OF IOWA,
Delaware County, ss:

On this 19th day of January, A. D. 1875, before me J. B. Satterlee, clerk of the district court of Delaware County, Iowa, personally appeared Rensselaer Eddy, treasurer and trustee of and for the Delaware Railroad Construction Company, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor,
477 and acknowledged the same to be his free and voluntary act and deed.

Witness my hand and official seal the date above written.

J. B. SATTERLEE,
Clerk of District Court of Delaware County, Iowa.

On the back of said exhibit is endorsed the following:

Rensselaer Eddy, treasurer and trustee of Del. Railroad Construction Company, to Delaware County Railroad Company. Deed. Filed for record the 19th day of January, A. D. 1875, at 4 p. m., and recorded in book H of town lots, on page 419. H. C. Jackson, recorder. Entered for taxation Jan'y 19th, 1875. J. B. Baggs, county auditor.

478 HENRY HARGER is next produced as a witness on part of the plaintiff in said cause, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows:

(It is agreed that the testimony of this witness be taken in narrative form unless objection is made.)

479 My name is Henry Harger; my age is forty-three years; I reside at Delhi, Iowa; my occupation is abstracter.

I am stockholder, treasurer, and director of the Delaware County Railroad Company, and have been since its organization. I do not know who drew the articles of incorporation of said company. I was present at the time of the organization of the company, and at the election of officers.

I think I was present at the time the proposition was considered by the said company, to the Delaware Construction Company, to purchase its interest in the Davenport and St. Paul Railroad. I think all the members of the company were present, but can't say certain. Judge Brayton was there. I do not know who prepared the proposition or who made it.

I cannot tell whether Judge Brayton prepared it or not. I do not remember that Judge Brayton took a very active part at that meeting, I can't remember the details. He was there and talked some. There has been three or four meetings of the board of directors. I can-

480 not tell without looking at the record. Witness examined the record and says there has been four meetings of the board of directors.

At the meetings of the board of directors the members of the company other than the directors were not generally present.

I think there was a meeting of the company held just before the meeting of the board the first time, and I do not know but the two last times, but I think not.

I can't be certain about the second time. I think once or twice there was a meeting of the board when there was no meeting of the company.

At the times when the board and the company met at the same time the action of the board might have been discussed by the company, but I do not know that it was. Judge Brayton was present at some of the meetings of the board of directors. The' asked Mr. Brayton's advice about several things, some legal matters.

I can't say whether Judge Brayton was present at all the meet-

481 ings; he may have been. I think two and perhaps the three first were held at Judge Brayton's office; the last was *was* held at my office, and I do not know certain but next to the last was held there. I do not remember who drew up the notice of the name and object and nature of the corporation for publication. I do not know who proposed the publication. I do not know whether Judge Brayton was present at the time. I do not know who drew the deed from the sheriff to the railroad company in 1875. I paid recording fees on two papers. I do not remember if this deed was one of them, or what papers I paid on. I left the papers with the recorder and do not remember to have seen them since.

I know about a deed twice recorded; I think the reason for the second recording was a defective acknowledgement. Mr. Martin called my attention to it.

I do not know whether any deeds or assignments have been made by

or to the Delaware County Railroad Company without the advice of Judge Brayton.

482 I do not know of my own knowledge of any deeds or assignments being made with his advice. I think I had no knowledge of the making of any deeds or assignments to the company until after they were made; I know that the board have at some time asked Mr. Brayton's advice, but can't tell when. I do not know that there has been a new trial granted to Denison; I know there is litigation, but I do not know what it is; I know the bondholders had something to do with it; I did not know when the bondholders came in; I cannot tell when I first heard of it; I know they had a trial in court last summer; I can't tell whether I was in court at the January term, 1875; I was in court when Judge Grant was there, can't tell whether it was in January; I do not know whether it was in May, 1875, don't think it was in June, 1875; I think I was a witness at that term of court.

483 I think I have attended all the meetings of the board of directors; I do not know that I have been particularly active; I think more of the business has been done by the president than by me. When my brother was alive he took more of an active part than I.

Whereupon the further taking of testimony is adjourned till March 17th, 1876, at nine o'clock a. m.

MARCH 17*th*, 1876, 9 *o'k a. m.*

Taking of testimony is resumed, parties present by their counsel.

HENRY HARGER testifies as follows, to wit:

I think that all the work of taking the minutes of the proceedings of the board of directors, and transcribing them into the record, was done by Charles Harger, during his lifetime; I do not know what other work he did.

I was recorder of Delaware County from 1867 till 1875; I recorded several mortgages against the Davenport and S't Paul Railroad Company;

484 I knew of all the mortgages recorded made by the Davenport and S't Paul Railroad Company to John Edgar Thompson and William Denizon, trustees, and all releases of the same that appears of record in Delaware County during my term of office.

I was referee to try the case of the Delaware Railroad Construction Company vs. the Davenport and S't Paul Railroad Company, in circuit court of Delaware County. I suppose I had all the papers in the cause. I do not know whether I read all the papers or not; I looked at all the papers that were brought up. What I mean by all that was brought up is, all the papers refer'ed to on the hearing by counsel on either side. I cannot now recollect what particular papers I did examine. I knew who were the defendants at the time; I do not remember how the defendants were served; I suppose I knew the terms of the contract between the construction company and the railroad company at the time of hearing; I do not remember whether the contract was before me,

485 but think by reading the report it must have been; I think from looking at the report that Exhibits B & C, attached to plaintiff's petition in that case, were before me, on the hearing and I think I knew the contents of them at the time; I know of the purchase by the Delaware County Railroad Company of the interest of the Delaware Construction Company, in the Davenport and S't Paul Railroad; there was no money paid at the time of the purchase as a consideration to my knowledge; I don't know that any money was ever paid by the Delaware County Railroad Company to the Construction Company as a consider-

ation for that purchase. I think Warren A. Brayton became a member of the Delaware County Railroad Company on the 10th day of June, A. D. 1875, and on that day he paid for his stock. I make this last statement from the record. That was the first money received by me as treasurer of the Delaware County Railroad Company.

486 Cross-examined:

I do not remember so as to fix the time that the board of directors asked your (Brayton's) legal advice before you was employed as attorney by the company; I mean I do not know whether your advice was asked before that time or not.

On the 10th day of June, A. D. 1875, the Delaware County Railroad Company paid twenty-nine hundred and seventy-nine dollars and sixty cents to J. B. Satterlee, clerk of circuit court of Delaware County, on a judgment of Westphal & Hines vs. Davenport and S't Paul Railroad Co. et al., and to redeem from a sale made in pursuance of said judgment, 13th of July, 1874, being that part of that railroad lying north of the Ill. Central Railroad, and south of the north line of Onida Township, in Delaware County, I mean that the money was paid to redeem from the sale under that judgment.

Cross 1. Do you know that there was a valuable consideration passed from the Delaware County Railroad Company to the Delaware Construction Company, for the purchase of the railroad property?

487 (Plaintiff objects for the reason that the question calls for a legal conclusion.)

Ans. I do. The consideration was promissory notes.

(Signed) HENRY HARGER.

488 RICHARD BOON is now called as a witness on part of the plaintiff, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn, on his corporal oath, to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

My name is Richard Boon. I reside at Delaware, Delaware County, Iowa. My age is sixty-three years. My occupation is that of farmer.

I am a stockholder in the Delaware Railroad Construction Company. I hold no office in that company.

I am also a stockholder in the Delaware County Railroad Company; am a director in said company, and have been since its organization. I was never an officer in the construction company.

(1) I and M'r Martin were sub-(2)-contractors under the construction (3) company, and built bridges for (4) the Davenport and S't Paul Rail-(5)road. I saw the contract (6) between the construction (7)
489 company and the Davenport (8) and S't Paul Railroad Com(9)-pany under which that work (10) was done before it was (11) sent to Davenport. Do not (12) recollect whether I ever saw (13) it afterwards or not (14). I do not know, but I heard a report that a clause was added to the contract as follows: "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County."

I had a talk with Baldwin, the engineer, in regard to the matter, and told him that if such a clause was insisted upon that they will be disappointed, as the citizens of Delaware County could not do it. And he said he had seen M'r Hiram Price, that he had met with the executive committee the might before, and that Price said he did not expect them to do any such thing.

The above answer commencing at the line marked 14 was given in response to the following question:

Was that clause in the contract much talked about among the members of the company?

(Plaintiff objects to the answer for the reason that it does not respond to the question and is hearsay evidence.)

490 I had heard of that clause at that time. I do not remember any particular conversation with any member of the construction company, but presume I have talked with some of them about it. It was the talk that such was the case; I knew that the clause was afterwards stricken out.

I was present at the time the agreement was made to strike it out in consideration of the sum of two thousand dollars, paid by the construction company.

The agreement was made by the executive committees of both companies before the resolution was made by the directors of the railroad company authorizing it to be stricken out and before the matter had been accepted by the construction company. I think I was present at the time the resolution was passed by the Delaware County Railroad Company authorizing the purchase of the interest of the construction company in the Davenport and S't Paul Railroad. I think all the

491 members of the construction company were present at that time except M'r Doolittle; but I am not sure; I think Judge Brayton was present. I guess Judge Brayton drew the resolution for purchase, but can't say positively.

I do not know that Judge Brayton took a more active part than the rest; I mean the rest of the company; I do not know whether Judge Brayton took as active a part as any member of the board of directors or not; I do not know whether Judge Brayton gave the board of directors any legal advice or not.

I do not know whether I had any conversation with Judge Brayton about the legal right of the construction company before the purchase; I don't think I did.

I can't tell how many meetings of the board of directors of the railroad company there has been; I don't think I have been present at all of them; I think I was present at the time of the purchase; I do not remember whether Judge Brayton was present. I guess he was. I do

492 not know who drew the assignment of the sheriff's certificate to the railroad company or the deed to the company. I do not know who drew the deed from the sheriff to the railroad company. I did not. I do not know whether M'r Thorpe did. I do know whether M'r Charles Harger did. I did not draw the notice of the name, object, and nature of the company, and do not know who did for publication.

Int. Did you not know before that purchase that the Davenport and S't Paul Railroad was mortgaged?

I expected it was. I heard it was. I never saw the original mortgage.

Int. What was the reason and purpose of the organization of the new company on part of the members?

Ans. As far as I am concerned it was to make money. I could get a little more interest in the new company than I had in the old. I knew

493 that there was a suit brought by the Delaware Construction Company to foreclose a mechanic's lien on the Davenport and S't Paul Railroad. I might have known that the mortgagees were made parties to that suit. I don't know whether I did.

Cross-examined:

I understood that the meeting I referred to at which the agreement was made, to abrogate the clause in the contract of the construction company heretofore referred to, was called by the board of directors of both companies. I had no knowledge of the existence of a mortgage on the railroad except by general rumor. I knew that the work was performed by the construction company under that contract.

There are four stations on the Davenport and S't Paul Railroad in this county.

I have an elevator on the Davenport and S't Paul Railroad and also one on the Illinois Central in the Delaware County. I have been accustomed to transact business with both roads.

494 I have been some acquainted with railroad operations for a number of years.

Int. What, in your opinion, would be the fair rental value of that portion of the Davenport and S't Paul Railroad in Delaware County from the 5th day of May, 1875?

(Objected to by plaintiffs as not a cross-examination; as calling for the mere opinion of the witness and not facts; and further for that the defendants have not laid the proper foundation for the introduction of such testimony.)

Ans. I should think it ought to rent for twenty-five hundred or three thousand dollars per month.

Redirect:

I am not posted as to positive figures about the earnings of the Davenport and S't Paul Railroad. I do not know how much they do earn. I know that some months there have been fifty car loads of lumber transferred at Delaware when the road has not been doing as much

495 business as they have been doing this fall.

The basis of my opinion is the business I see done at Delaware. I have no statistics. I live where I see every train on both tracks when I am out of doors. I do not know what profit the road makes on the cars transferred. Most of them go north. A few of them have come to Delhi.

Recross-examined:

I never had any doubt about the validity of the mechanics' lien of the Delaware Construction Company on the Davenport and S't Paul Railroad, nor of the validity of the proceedings in court in relation thereto.

I never heard any member of the construction company express any doubt about the validity of said lien or proceedings.

Redirect examination:

I did not suppose the mortgagees had any right at the time

496 of the filing of the lien or bringing of the suit.

(Signed) RICHARD BOON.

497 F. B. DOOLITTLE is next produced as a witness on part of plaintiff in said cause, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn, on his corporal oath, to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

498 My name is F. B. Doolittle; my age is fifty years; I reside at Delhi, Iowa; my present occupation is manufacturer.

I have been a stockholder of the Delaware Railroad Construction

Company since its organization, and treasurer and director of said company from its organization till December, A. D. 1873.

I was assistant treasurer; I think I was director of the Davenport and St. Paul R. R. since its organization till this time, except the year 1871; of the Davenport and St. Paul Railroad Company from June 21, 1870, till the present time.

I have attended two annual meetings of the construction company since December, 1873. The last meeting I attended was the annual meeting of the company in December, 1875. I have not attended any meeting of the board of directors since December, 1873. I was not present when the proposition was made by the Delaware County Railroad Company to purchase the interest of the construction company
499 in the Davenport and St. Paul Railroad; the matter of the sale was mentioned to me by Mr. Brayton; I said I would consider the matter, and that is all I knew about it till after it was done.

The conversation was had some time before the sale, perhaps a week or ten days. Some one talked with me, I think it was Brayton, and made this point, that the construction company under its charter could not operate a railroad. I am not a member of the Delaware County Railroad Company. There has no money or other valuable consideration been *been* paid to me for my interest in the construction company since said sale.

The amount of taxes and subscription collected by the Davenport and St. Paul Railroad Company in Delaware County was not as much as was paid to the construction company by the railroad company.

The railroad company paid the construction company one hundred and thirty-nine thousand one hundred and eighty-nine & $\frac{46}{100}$ dol-
500 lars, seventy thousand of which was paidout of funds not collected in Delaware County; the ballance was paid from funds collected in Delaware County.

There is about twelve thousand dollars of taxes and subscriptions yet uncollected. Between eight and nine thousand of the above is in tax in South Fork Township, which the treasurer has been enjoined from collecting.

The injunction suit was between the tax-payers and the Davenport and St. Paul Railroad Company.

Cross-examination:

I collected the taxes and subscriptions in Delaware County by the authority of and for the Davenport and St. Paul Railroad Company, as assistant treasurer of that company. I have the authority given me by the company so to do. Witness produces a paper, a copy of which is hereto attached and marked, "Exhibit F."

I was present at a meeting of the board of directors of the Davenport and St. Paul Railroad Company at the time the resolution
501 was passed confirming the authority, to wit, the 21st day of June, 1870. I disbursed the taxes and subscriptions I collected in this county under the directions of the railroad officials. I do not now recollect who the executive committee were at the time I got my directions of the railroad officials. I do not now recollect who the executive committee were at the time I got my direction for disbursing the funds. I did know at the time.

I had verbal directions from time to time from the president; from the time of my first appointment I had written directions, which I now produce. Said directions are offered in evidence by defendant, which are hereto attached and marked "Exhibit G." I know of a meeting of the

executive committee of the Davenport and S't Paul Railroad Company and the executive committee of the Delaware Railroad Construction Company, at Monticello, to settle some matters of difference between said companies. That meeting was on the 4th day of June, A. D. 1872, or before. I think it was on that day, but it may have been a day or two before. Said committees met there to adjust a difference of
502 opinion as to a clause inserted in the contract between the Davenport and S't Paul Railroad Company and the Delaware Construction Company, by Mr. Price, after the signatures of the officers of the Delaware Railroad Construction Company.

It was agreed then by the two committees that that clause be cancelled, and the Delaware Railroad Construction Company agreed to credit the Davenport and S't Paul Railroad Company two thousand dollars at such time as the railroad company had paid the construction company the full amount to be due them on their contract for building the railroad through Delaware County, the said two thousand dollars to be credited at final settlement.

That agreement was afterwards carried out by the two companies. The Construction Company did comply with their contract. They commenced work under that contract in September, A. D. 1870. They furnished the materials and completed the work under that contract, according to its terms. The work was completed in 1872. I think in October.

503 E. Baldwin was the engineer of the railroad company. The estimates were made by the division engineer, and reviewed by Mr. Baldwin, and Mr. Baldwin made the final estimates, including all former estimates.

Redirect:

I think Mr. Boon was director of the Davenport and S't Paul Railroad Company in 1869 & 1870.

I cannot say whether Judge Brayton, in the conversation referred to, gave as a reason for the formation of a new company that the Construction Company could not operate a railroad under its charter, or not, but he left me with the impression that that was the reason for the suggestion about the formation of the new company.

(Signed) F. B. DOOLITTLE.

504 F. B. DOOLITTLE, recalled by defendant March 18th, 1876, testifies as follows, to wit:

The Davenport and St. Paul Railroad Company brought all the suits that have been brought for the collection of stock in Delaware County since the contract between the Delaware Construction Company and the Davenport and St. Paul Railroad Company was executed, and *and* work commenced under said contract. Probably forty suits in all have been brought. A part of them were brought before the clause was stricken out of the contract.

Within a few months after the work commenced under the contract suits were commenced by the Davenport and St. Paul Railroad Company for the collection of subscription to stock in Delaware County.

(Signed) F. B. DOOLITTLE.

505 EXHIBIT F.

Resolved, That F. B. Doolittle be appointed ass't treas. to receive the money paid by stockholders, north of Wyoming, and pay out the same

under the direction of the treasurer, and also to act as the agent of the company in procuring the right of way and depot grounds between Wyoming and the north line of Delaware County, under direction of the executive committee.

I hereby certify the above and foregoing to be a correct copy of an extract from the minutes of the proceedings of the board of directors of the Davenport and St. Paul Railroad Company, passed this 21st of June, 1870.

Witness my hand and the seal of said R. R. Co. the day and year above written.

[SEAL.] W. H. PRICE,
Sec't'y.

506 EXHIBIT G.

Resolved, That F. B. Doolittle, collector of the D. and St. P. R. R. Co., be, and he is hereby, directed to pay out of the funds collected by him in Delaware County, Iowa, belonging to said company, the salaries and necessary travelling expenses of himself and the division engineers for said county; also to pay for right of way and expenses for the same, and to pay to the Delaware R. R. Construction Company (80) eighty per cent. on the estimates of the chief engineer for work done by said Delaware R. R. Construction Co. on construction of the D. & St. P. R. R.

Resolved, That the compensation of F. B. Doolittle be, and hereby is, increased in the sum of twenty-five (25) dollars per month from July 1st, 1870, as per his request.

I hereby certify the above to be true and correct copies of resolutions passed by the executive committee of the board of directors of the D. & St. P. R. R. Co., held at the office of said company Dec. 28th, 1871.

507 Witness my hand and the seal of said company this 28th day of Dec'r, A. D. 1871.

[SEAL.] W. H. PRICE,
Secretary.

508 Whereupon the further taking of testimony is adjourned till March 18th, 1876, at 8 o'clock a. m.

MARCH 18*th*, 1876, 8 *o'clock a. m.*

The taking of the testimony is resumed, when

A. E. MARTIN is produced as a witness on part of the plaintiff in said cause, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

509 My name is A. E. Martin; I reside at Delhi, Delaware County, Iowa; my age is 43 years; my last occupation was contractor.

I have been a stockholder in the Delaware Construction Company since its organization, and a director and secretary of the company since December, A. D. 1870. I am a member of the Delaware County Railroad Company; have been secretary and director in said company, I think, since the 10th of July, 1875.

I do not know who drew the deed from the sheriff of Delaware County to the Delaware County Railroad Company. (Deed is shown to witness.) Witness says he thinks he knows whose handwriting the body of

the deed is in. I think the deed is in the handwriting of M'r's Dunham, the sheriff's wife.

The second acknowledgment on the deed is in my handwriting. I found that the acknowledgment was defective. I found it in copying the deed for some purposes.

I think I talked with M'r Brayton about the matter, and also
510 with Peters and Heath and Henry Harger, the old recorder.

I do not know whether I have been present at all the meetings of the board of directors or not. Think I have been at all the meetings since I have been director. I was present at the time the offer was made for the purchase of the interest of the construction company in the railroad.

I have none of those notes given by the railroad company to the construction company to take up the note of the railroad company held by the construction company. I do not think any of them are in existence. I do not think any of the notes given by the individual members of the Delaware County Railroad Company to the company in payment of their subscription to the stock of the company are in existence.

I think I first knew of the granting of the new trial in the spring of the year. I have here the record of the proceedings of the board of
511 directors of the Delaware Railroad Construction Company, authorizing R. Eddy to execute a deed to the Delaware County Railroad Company upon the receipt of the consideration for the purchase of the Delaware Railroad Construction Company's interest in the Davenport and S't Paul Railroad, according to the terms of the proposition of the Delaware County Railroad Company for purchase, and the acceptance of the same by the Delaware Railroad Construction Company.

(A copy of the record of said proceedings is hereto attached, and marked "Exhibit H.")

The record of the proceedings of the Delaware Railroad Construction Company by its board of directors relating to the sale of its interest in the Davenport and St. Paul Railroad to the Delaware County Railroad Company is offered in evidence, a copy of which is hereto attached and marked "Exhibit I."

I do not know of any other record of the Delaware Railroad Construction Company by its board of directors authorizing R. Eddy to
512 receive any consideration from the Delaware County Railroad Company for said purchase.

Plaintiff now offers in evidence the record of the proceedings of the board of directors of the construction company, authorizing R. Eddy, treasurer, to receive the notes of the construction company in exchange for the note of the Delaware County Railroad Company to the amount of said note, a copy of which is hereto attached and marked "Exhibit J."

Witness says this is the only record, so far as he knows, authorizing R. Eddy to make the exchange of the notes of the railroad company for the notes of the construction company.

Cross-examination.

The promissory notes given by the individual members of the Delaware County Railroad Company to the company, and by it to the construction company in part payment for the railroad, became due in May, 1875, and were taken up by the makers, who executed new notes
513 to the construction company in exchange for said notes, and the time was extended three months.

These last notes became past due, and there was a payment made on

them, and new notes given for the ballance, which the construction company still hold.

All of the notes above mentioned were in form of ordinary promissory notes. Witness offers in evidence a form *in* which he says is substantially the form used for all the notes, which form is hereto attached and marked "Exhibit K."

After the note given by the railroad company to the construction company became due, the board of directors of the railroad company authorized me to purchase enough of the indebtedness of the construction company to pay the note owing by the railroad company to the construction company. The authority given me was verbal.

I went and purchased the notes of the construction company of the holders of the same, enough in amount to equal the amount of
514 the note of the railroad company to the construction company.

I bought the notes in this wise: I ascertained the amount that was due the holders of the notes of the construction company, and then the officers of the railroad company executed the notes of the company of like amount, and the holders of the construction compan*ie*'s notes accepted the railroad compan*ie*'s notes in payment for the notes of the construction company held by them.

The railroad company took the notes I purchased for them, and passed them over to M'r Eddy, in payment for the note of the railroad company held by the construction company. I think the exchange was made with M'r Eddy the last days of June or first days of July, 1875.

The members of the Delaware County Railroad Company subscribed for stock to the company on the 18th of January, A. D. 1875, and afterwards, on the same day, gave their notes in payment of the same.

I have worked considerable at constructing railroads, and been
515 somewhat familiar with the operations of the same.

I think that the D. & S't P. Railroad, in Delaware County, is less valuable now than on the 4th of May last, by reason of the ties and bridges decaying and *and* the iron being worn-out. The amount would be at the rate of one-seventh of the cost of the ties per annum, and one-tenth of the cost of the bridges and sluices per annum, and one-tenth of the cost of the iron per annum.

The deterioration on the ties is 4,426 dollars since the 5th of May last, and on the culverts 667 dollars, on the bridges $2,000 *dollars*, and on the iron 14,583 dollars. The deterioration on the ties is 442 dollars per month, on the culverts 67 dollars per month, on bridges 200 dollars per month, and on iron 1,458 dollars per month.

Int. What is the rental value of the property purchased by the Delaware County Railroad Company of the Delaware Railroad Construction Company, being that part of that Davenport and S't Paul
516 Railroad lying in Delaware County, from the 5th day of May, 1875?

(Objected to by plaintiff as not a cross-examination; as calling for the mere opinion of the witness and not facts; and, further, for that the defendants have not laid the proper foundation for the introduction of such testimony.)

Ans. Two thousand dollars per month. I base my judgment upon this: that would be only the interest upon the value of the road at six per cent., and further, that the Illinois Central Railroad would pay at least fifteen hundred dollars per month, and maybe more. I had a talk with an Illinois Central man, and he said their company would be glad to *to* rent the road. I asked him what they would be willing to pay, and he said 1,500 dollars per month, and maybe more. I think the road would

rent for two thousand dollars per month and the lessee would keep up the repairs.

(Signed) A. E. MARTIN.

517 EXHIBIT H.

Moved and carried that M'r R. Eddy, the treasurer for the Delaware R. R. Con. Co., be directed and instructed to execute a deed to the Delaware County Railroad Co. of that portion of the Dav. & S't P. R. R. lying in Delaware County purchased by him on the 4th of May, 1874, which was sold on execution against the D. & S't P. R. R., upon the receipt of the consideration for the purchase of said property, according to the terms of the contract this day made with said Delaware County R. R. Co.

518 EXHIBIT I.

DELHI, *January* 18, 1875.

At a meeting of the board of directors of the Delaware R. R. Con. Co., on call of the secretary and order of the president, all the members being present, the meeting was called to order by the president.

There was a proposition received from the Delaware County Railroad Company to purchase the interest of the Del. R. R. Con. Co. in and to all that part of the D. & S't P. R. R. lying in Delaware County.

Copy of proposition.

To the board of directors of the Delaware Railroad Construction Company:

The Delaware County Railroad Company hereby offers to purchase the interest of the Delaware Railroad Construction Company in and to that portion of the Davenport and S't Paul Railroad lying within the limits of Delaware County, Iowa, for the sum of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, of which thirty-three thousand and two hundred dollars to be paid down
519 and the remainder on the 5th day of May, 1875.

J. M. HOLBROOK,
President Delaware County R. R. Co.
CHA'S HARGER,
Secretary Delaware Co. R. R. Co.

Which proposition, on motion of A. E. Martin, was accepted.

Copy of acceptance.

DELHI, *Iowa, Jan'y* 18, 1873.

The Delaware Railroad Construction Company accepts the foregoing proposition on the 18th day of January, A. D. 1875.

C. F. FLEMMING,
President Delaware R. R. Con. Co.
A. E. MARTIN,
Sec't'y Del. R. R. Con. Co.
R. EDDY,
Treasurer Del. R. R. Con. Co.

520 EXHIBIT J.

DELHI, *June* 6, 1875.

Board met by appointment at the office of J. M. Brayton, and it was

resolved that the treasurer be authorized to receive all notes given by the Del. R. R. Con. Co. presented to *to* him by the treasurer of the Delaware County R. R. Co. in payment of its indebtedness to the Del. R. R. Con. Co.

The above resolution was unanimously adopted.

Board adjourned.

A. E. MARTIN,
Secretary.

521 EXHIBIT K.

$5,500.00.] DELHI, *Jan'y* 18, 1875.

On or before the 5th day of May, 1875, for value received, I promise to pay to the Delaware County Railroad Company, or order, the sum of five thousand five hundred dollars, with interest thereon from date at the rate of ten per cent. per annum.

(Signed)

522 I do hereby certify that the foregoing deposition of J. M. Holbrook, Henry Harger, A. E. Martin, F. B. Doolittle, R. Eddy, and Richard Boon were, when taken, then and there reduced to writing by me in the presence of said deponents, and by them respectively subscribed in my presence after having been so reduced to writing.

I further certify that the reason for taking said depositions was and is, and the fact was and is that all of said deponents live and reside in the county of Delaware and State of Iowa, and a distance of more than one hundred miles from the city of Des Moines, where said suit is pending and to be tried.

I further certify that, it being impracticable for me to deliver said deposition with my own hand to the court, for which they were taken, I have retained the same for the purpose of being sealed up by me and transmitted by the U. S. mail to said court, for which they were taken, and to remain under my seal until there opened.

523 I further certify that I am not counsel nor attorney to either of the parties to this suit, nor interested in the event of this cause.

I further certify that the fee for taking said deposition, amounting to twenty-seven dollars, has been paid me by Grant and Smith, attorneys for Lewis H. Meyer and William Denison, plaintiffs.

I further certify that the witnesses herein are entitled to fees as follows:

A. E. Martin, three days' attendance	$4 50
F. B. Doolittle, two " "	3 00
J. M. Holbrook, two " "	3 00
R. Eddy, one " "	1 50
Henry Harger, one " "	1 50
Richard Boon, one days' attendance and four miles travelling	1 90

Which said fees are not paid.

(Signed) J. BOGGS,
Commissioner as aforesaid.

(Endorsed): Moses Dewit Loomis et al. vs. Davenport and S't Paul Railroad Company et al. Depositions on part of Lewis H. Meyer
524 & William Dennison, trustees, plaintiffs. Filed May 13, 1876. E. R. Mason, clerk.

525 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

STATE OF IOWA,
Delaware County, ss :

Be it remembered that on this 17th day of April, A. D. 1876, at three o'clock p. m. of said day, at the village of Delhi in said county, before me, a commissioner appointed by the circuit court of the United States within and for the district of Iowa, under and by virtue of the annexed notice, the following-named witnesses were produced on part defendants, viz: A. E. Martin and F. B. Doolittle, the testimony of said witnesses being alleged to be material and necessary in said cause.

And the said witnesses, being of lawful age and sound mind and being by me first carefully examined, cautioned, and duly sworn on their respective corporal oaths to testify the whole truth touching the
526 matters in controversy in said civil cause, respectively depose and say as follows:

J. M. Brayton, esq., appears on part of defendants and L. M. Fisher, esqr., appears on part of plaintiffs.

When said A. E. MARTIN is produced as a witness on part of defendant, and deposes as *as* follows:

My name is A. E. Martin; I reside at Anamosa, Iowa; my age is 43 years; my occupation is warden of the additional penitentiary at Anamosa. I gave testimony in this case before J. B. Baggs, commissioner, in March, 1876. I testified at that time in relation to a meeting of the executive committees of the Delaware Railroad Construction Company and the Davenport and S't Paul Railroad Company, at Monticello, Iowa. That meeting was on the third day of June, 1872, between the hours of one and two o'clock p. m. I am positive of the day. One thing that makes me positive that it was that day is that I made a memorandum of expenses on that day at Monticello in my diary. It was on Monday.

On that same day, when we arrived there, I registered the names
527 of our party in the hotel register, viz, myself, F. B. Doolittle, R. Boon, and R. Eddy. Another circumstance makes me positive is that S. Denton went down with us at the time to see M'r French to try and get a contract from him, and his, Denton's, name appears on the register of the same date.

Ques. Have you the hotel register in your possession?

(Plaintiff objects to witness answering the question for the *the* reason that the register is not properly identified, and the witness is not the proper party to identify it.)

Ans. I have. From looking at the register I can say positively I know that it was the day we were there. The two committees made an agreement on that day to strike that clause from the contract between the Davenport and S't Paul Railroad Company and the Delaware Railroad Construction Company, which was inserted by Hiram Price, after the officers of the construction company had signed said contract. The agreement was that said clause should be stricken out and that
528 the construction company should, at final settlement, allow or pay to the railroad company two thousand dollars. I think the agreement was in writing; am quite it was.

(Plaintiff now objects to all the foregoing oral evidence in relation to

said agreement and moves that the same be stricken out as not being the best evidence.)

I have no copy of that agreement in my possession. I do not know whether I ever had. If I ever had, it is lost. I have searched for it and cannot find it. It was agreed that M'r French was to have a proper resolution spread upon the record of the railroad company to carry the agreement into effect, and a copy of said record was to be sent to our company, which was to be spread upon the record of the construction company, and the construction company was to adopt it and spread a proper resolution upon their record to give the agreement effect.

529 Cross-examined:

The executive committee of the construction company were all present. I do not remember of the interest of the railroad company being represented by any one else than Geo. H. French. The members of the executive committee of the Delaware Railroad Construction Company were F. B. Doolittle, R. Eddy, and myself. The only member that I remember of representing the railroad company was Geo. H. French. I do not know now who constituted the executive committee of the railroad company. I knew French was one of them. I knew there was such a thing as an executive committee for the railroad company, and French was one of them. I think there was three or five of the members; I don't think there was more. I do not know what authority M'r French had to represent the company. The agreement was that the executive committee of the board of directors of the railroad company were to pass a resolution striking said clause from the contract. The meeting at

530 Monticello was for the purpose of making an agreement to strike that clause from the contract. I am certain that the third day of June was the day, and that Geo. H. French was there. I knew it was that day.

(Signed) A. E. MARTIN.

F. B. DOOLITTLE is next produced as a witness on part of defendant, and testifies as follows, to wit:

My name is F. B. Doolittle; my age is fifty years; I reside in Delhi, Delaware County, Iowa; I testified in this case in the month of March, 1876, before J. B. Baggs, commissioner. A short time previous to the time that the contract was executed between the Davenport and St. Paul Railroad Company and the Delaware Railroad Construction Company, for grading, bridging, and tieing the road through Delaware County, I went to Davenport, at the instance of the Delaware Railroad Construction Company, to make a contract with Mr. Price, the president

531 of the railroad company, for grading, bridging, and tieing the Davenport, and St. Paul Railroad through Delaware County; I made a verbal agreement for a contract with him the same as our written contract, excepting the clause that follows the signatures of the officers of the construction company. I submitted the same to the construction company, the company then had duplicate copies of a contract drawn in accordance with the agreement, which were signed by the officers of the construction company, and then both were sent to Mr. Price. According to a previous understanding he was to sign both and return one to the construction company; he returned one signed, but above his signature and below the *the* signatures of the officers of the construction company was inserted the clause that there appears. That was the contract under which the work was done.

(Plaintiffs objected to all the foregoing testimony as incompetent and immeterial.)

532 Some time in the early part of the year 1872 there was a difference of opinion arose as to the construction to be given to that clause between the two companies. In the latter part of May, 1872, I was in Davenport, and had a meeting with the executive committee of the D. and St. P. R. R. Company, at which the question of the construction of said clause was discussed. A proposition was then made to me that if the construction company would credit the R. R. company two thousand dollars, they would strike out said clause.

(Plaintiff objects to all the foregoing evidence as incompetent and immaterial.)

I said I was not authorized to make an agreement, but would recommend our company to accept their proposition, and if they would appoint a time and place, I would have the officers of the construction company meet them and close a bargain if they were disposed to. They appointed Monticello as the place, and the third day of June, 1872, as the time.

(Plaintiff objects to the foregoing testimony for same reason as before.)

533 A meeting was held by the officers of the two companies at that time and place. M'r French then and there made the same proposition, which was agreed to by the officers of the construction company. I think the agreement was reduced to writing. My recollection is that M'r Martin took the agreement. It might have been M'r Eddy or myself. M'r Eddy was president of the construction company. I am positive that the time of the meeting at Monticello was on the 3rd day of June, A. D. 1872. The reason I am positive is I refer to my diary for that year and find an entry made of the time of the meeting. On the 25th of May, 1872, I was in Davenport, and at that time I made in my diary the entry under the date of the 3rd of June, in order that my attention would be called to it when that should arrive. It was agreed there that the executive committees of both companies should pass proper resolutions approving the agreement and spread it upon the record of both companies.

534 (Plaintiffs objected to the admission of parol testimony as to said agreement as not the best evidence.)

M'r Price was president of the R. R. company during the year 1870, and in the year 1871, up to about the first of September, according to my recollection. I was acquainted with the general condition of the R. R. on the 4th of May, 1874, and am now. It is less valuable now than at that time. It is less valuable by reason of ties and bridges decaying and the iron being worn.

(The above evidence is objected to by pl'ff as irrelevant and immaterial, and that there is no sufficient basis for the introduction of such testimony.)

I should estimate the deterioration to be 25.00 dollars per month.

(Objected to by plaintiff for the same reason as above.)

It was never claimed by either company that the construction company had anything to do with the collection of the subscription in Delaware County.

535 Cross-examined:

It was claimed by the railroad company that the construction company should have only what could be collected from the subscriptions in Delaware County for the work done in Delaware. The construction company held otherwise. The object of the meeting at the

Montecello was to adjust this difference of opinion. My recollection is that there were five members of the executive committee; three of whom were present at the meeting in Davenport spoken of by me in my direct testimony. M'r French was present at the meeting at Monticello. There may have been another member, but can't say positively. M'r French was at the meeting in Davenport; authorized to arrange matters on part of the R. R. company at Monticello. The agreement that was entered into at Monticello was afterwards carried out.

I have a general knowledge of the condition of the R. R. from seeing it, riding over it, and having been concerned in constructing it. My knowledge is general. I have no particular knowledge of the
536 condition of the road in 1875. I mean to say that I have not investigated in particular, but I have a general knowledge of the road and I know that it is a fact that ties, bridges, and buildings decay by the lapse of time and that iron wears out. When I speak of the depreciation, I mean the natural wear and tear of the road. I do not know of any particular failure of the present management to keep the road in repair. I do not know of their renewing any ties or bridges. I do not think the time has yet come for that. It is possible that they may have made renewals, but don't think they have except to keep the bank in repair. I think they have done that. I arrive at my estimate of $25.00 per month of deterioration in this way: I estimate the value of the road at $10,000 per mile; that the road will need renewing at from seven to ten years from its construction. I have examined the iron to some extent and find that it is being worn out very fast.

A late hour having arrived, the further taking of testimony is adjourned till to-morrow morning at eight o'clock.

537 APRIL 18th, 1876—8 o'clock a. m.

The examination of Witness Doolittle is continued. Counsel for both parties were present.

Re-examined by defendant's counsel:

The first I knew that the R. R. company claimed the construction company were only to have for pay for the work the subscriptions that could be collected from the citizens of Delaware County was in the latter part of the year 1871, and they never claimed that the construction company had anything to do about collecting said subscriptions. I have made diligent search for the agreement made at Monticello and cannot find it. I am confidnt that Mr. Martin took the agreement at the time of the meeting and I never had it since. I know I have not got it.

538 Recross examination:

I cannot give the month in 1871 when the difference of opinion arose, but it was in the latter part of the year. That is about the time I first knew of the difference in opinion. I do not know what opinion the officers of said company held before that time. The agreement at Montecello was that the construction company were to credit the R. R. company $2,000 on final settlement and that the clause be stricken out, and there was an understanding that proper resolutions should be spread upon the record of both companies to give the agreement effect.

(Signed) F. B. DOOLITTLE.

539 EXHIBIT A.

It is admitted by counsel in the presence of the commissioner that R. Eddy would testify as follows: that he was present at the meeting re-

ferred to in the testimony in this cause held at Monticillo; that the agreement there made was reduced to writing; that said agreement is not and has not been in his possession, and that said Eddy would further testify that he does not know where said agreement is.

Dated this 17th day of April, 1876.

(S'g'd) L. M. FISHER,
Att'y for Meyer and Dennison.

(") J. M. BRAYTON,
For Del. Co. R. R. Company and Del. R. R. Construction Co.

(Endorsed:) Filed before me April 17th, 1876. (Signed) J. B. Baggs, commissioner.

540 I do hereby certify that the foregoing depositions of A. E. Martin and F. B. Doolittle were, when taken, then and there reduced to writing by me in the presence of said deponants and by them each respectively subscribed in my presence after having been so reduced to writing and carefully read over to them.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that both said deponants live and reside at a distance of more than one hundred miles from the city of Des Moines, where said suit is pending and to be tried; said Martin residing at Anamosa, Jones County, Iowa, and said Doolittle, at Delhi, Delaware County, Iowa.

I further certify that it being impracticable for me to deliver said depositions with my own hand to the court for which they were taken, I have retained the same for the purpose of being sealed up by me and transmitted by the U. S. mail to said court for which they were taken, and remain under my seal until there opened.

I further certify that I am not counsel nor attorney to either
541 of the parties in said suit, nor interested in the event of this cause.

I further certify that the fee for taking said depositions, amounting to four and $\frac{20}{100}$ dollars, has been paid me by J. M. Brayton, the attorney for the defendants.

I further certify that the stipulation as to the evidence that R. Eddy would give (marked "Exhibit A") was admitted by agreement and the presence of said witness waived.

I further certify that the witnesses herein are entitled to fees as follows: F. B. Doolittle, two days, $3.00; A. E. Martin, one day, 1.50—127 miles, 2.76, $4.20. Said witness fees are not paid.

(S'g'd) J. B. BOGGS,
Commissioner as aforesaid.

542 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

To the plaintiffs, Lewis H. Meyer and William Dennison, trustees, and Grant and Smith their solicitors and counsel:

You will please take notice that F. B. Doolittle and Ancil E. Martin, necessary witnesses on behalf of the following defendants in said cause,

to wit: the Delaware County Railroad Company and the Delaware Railroad Construction Company, living at Delhi, in the county of Delaware and State of Iowa, a greater distance than one hundred miles from the city of Des Moines, the place of trial of said cause, will be examined de bene esse, on the part of the said defendants above named, before J. B. Baggs, esq., a commissioner duly appointed by the circuit court of the United States for the district of Iowa, by virtue of the
843 act entitled "An act for the more convenient taking of affidavits and bail in civil causes," at his office in Delhi, in Delaware County, Iowa, on the seventeenth (17) day of April, A. D. 1876, commencing at three o'clock p. m. of that day, or before some other officer authorized by law to take such deposition de bene esse, and at which time and place you are notified to be present to attend upon the taking of the deposition of said witnesses and for the purpose of cross-examination if you desire.

(S'g'd) J. M. BRAYTON,
Solicitor and Counsel for the Delaware County Railroad Company and the Delaware Railroad Construction Company.

We hereby acknowledge that the above notice has been duly served upon us, in the city of Davenport, Iowa, on this fifth day of April, A. D. 1876.

(S'g'd) GRANT AND SMITH,
Sol'rs for Compl'ts.

(Endorsed:) Moses De Witt Loomis et al. vs. The Davenport and S't Paul Railroad Company et al. Depositions on part of the Delaware Railroad Construction Company and the Delaware County Railroad Company, defendants. Filed May 13, 1876. E. R. Mason, clerk.

544 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company et al.

It is hereby stipulated and agreed between the complainants in said cause, Lewis H. Meyer and William Dennison, trustees, and the Delaware County Railroad Company and the Delaware Railroad Construction Company, that the Delaware Railroad Construction Company, on the sixth day of August, 1870, entered into a contract with the Davenport & S't Paul Railroad Company, a defendant in this suit, to grade, bridge & furnish ties for that part of the Davenport & S't Paul Railroad included between the north and south lines of Delaware County, Iowa; a copy of said contract is contained in the record filed in this court entitled "The Delaware Railroad Construction Company vs. The Davenport &
545 S't Paul Railroad Company & others," on pages 22, 23, 24, 25 & 26.

Said construction company began work under said contract in 1870, and completed the same after the first day of September, A. D. 1872.

On the 20th day of December, 1872, the Delaware Railroad Construction Company filed in the office of the clerk of the district court of Delaware County, Iowa, a statement for a mechanic's lien; a copy of which is contained in the record above referred to, on pages 22 to 28 inclusive.

That the said contract of the 6th of August, 1870, was changed afterwards by agreement of the contracting parties, as appears by Exhibits B & C to the said record, which are made a part of this stipulation, and appear on pages 28 to 30 of said record, inclusive, and the date of the agreement to strike this clause out is left open to proof.

That on the 10th day of Jan'y, 1874, said Delaware R. R. Construction Company commenced suit in the circuit court of Delaware County,
546 Iowa, against the Davenport & S't Paul Railroad Company & others, by placing original notices in the hands of the sheriff, and filed its petition against the same parties in said court on the 15th day of January, 1874; said suit is the one described in the record above referred to.

That on the 6th day of February, 1874, a decree was rendered against the Davenport & S't Paul R. R. Company in said suit, establishing a mechanic's lien upon the portion above referred to, which is set forth on pages 63 to 66 inclusive of said record.

And the said cause was then continued for service as to Thompson & Dennison, trustees.

On the 7th day of April, a supplemental petition was filed in said suit, being that contained on pages 67 & 68 of said record; execution was issued on 17 Feb., 1874, under said decree of Feb'y 6, 1874, and the property of the Davenport & S't Paul Railroad Company was sold, as shown by the copy of said execution on pages 73 to 75 inclusive and the
547 sheriff's return to the same on pages 75 to 77 inclusive, and said sale was made on the 4th day of May, 1874, to R. Eddy, as trustee for plaintiff in said suit.

That Thomson & Dennison, trustees, were served with notice in said suit by publication on the 30th day of April, 1874, which notice appears in said record on page' 71 to 73. That a decree was rendered against them by default in said suit, establishing said lien as to them, on the 22 day of May, 1874, as shown by a copy of the same, on pages 80, 81 of said record.

That on the 23rd day of May, 1874, the said John Edgar Thomson, trustee, died.

On the 19 day of January, 1875, said property was sold by the said Delaware R. R. Construction Company to the Delaware County R. R. Company, and the said R. Eddy, trustee, conveyed the same to said Delaware County R. R. Company, under the direction of said con-
548 struction company, and said conveyance was duly acknowledged and afterwards seconded in the office *of the office* of the recorder of Delaware County on the 19 day of January, 1875.

That the consideration for this conveyance given by the Delaware County Railroad Company to the Delaware R. R. Construction Company was ($33,200) thirty-three thousand two hundred dollars, in the notes of the individual members of the Delaware County Railroad Company, previously received by the last-named company in payment of its subscriptions to its stock by said members, and the sum of twenty thousand seven hundred and seventy four $\frac{73}{100}$ (20,774.73) dollars in the note of the Delaware County Railroad Company, which last-named note was by its terms due in May, 1875.

And this last-named note was taken up in June, 1875, by the railroad company, by notes in the aggregate to its amount, which notes were in form the notes of the Delaware Railroad Construction Company,
549 but whether so in fact the parties do not agree, and the parties reserve the right to take proof in reference thereto.

That on the 4th day of May, 1874, the sheriff of Delaware County executed to R. Eddy, as trustee, a certificate of sale of said property, a

copy of which, marked Exhibit B, is annexed to the petition of the Delaware County R. R. Company, filed in this court.

And on the 20th day of January, A. D. 1875, R. Eddy assigned all right, title, and interest in and to the same to the Delaware County Railroad Company. That on the 4th day of May, 1874, the sheriff of Delaware County executed to R. Eddy, as trustee, a deed of said property, which was sold as being subject to appraisement, and said deed was acknowledged and afterwards recorded on the 8th day of May, 1874, in the office of the recorder of Delaware County, Iowa.

That on the tenth day of May, 1875, the sheriff of Delaware
550 County, Iowa, by virtue of said certificate of sale and the assignment thereof by said R. Eddy, as trustee, to said Del. Co. Railroad Company, executed to said Delaware County Railroad Company a deed of said property, duly acknowledged, and the same was duly recorded in the office of the recorder of Delaware County, Iowa, on the 13 day of May, A. D. 1875, a copy of said deed, marked "Exhibit E," is annexed to said petition of the Delaware County Railroad Company, filed in the office of the clerk of the circuit court of the United States for the district of Iowa on or about September, A. D. 1875.

That on the 26 day of January, 1875, William Dennison, surviving trustee, appeared in the suit of The Delaware Railroad Construction Company vs. The Davenport & S't Paul R. R. Company and others, and made a motion for a new trial of said suit; which motion was granted, and the cause continued until next term of the Delaware circuit court, as appears from the record entry on pages 84 & 85 of said record.

551 That a mortgage was executed by the Davenport & S't Paul Railroad Company on all its property then owned or thereafter to be acquired by Thompson and Dennison, trustees, dated July 1, 1871, which mortgage was recorded on the 7th day of February, 1872, and released of record on the 24th day of August, 1872, a copy of which mortgage is cont'in*u*ed on pages 139 to 156 inclusive of said record.

There were also two supplemental mortgages executed by said company, which were recorded on the 25 and 28 days of March, 1872, respectively, and both released of record on the 24th day of August, 1872, as appeared by the copies of the same in said record on pages 173 to 187 inclusive.

And that on the 4th day of June, 1872, a mortgage was executed by the Davenport & S't Paul R. R. Company to the same trustees, acknowledged on the 16th day of May, 1872, and dated July 1, 1871,
552 which said mortgage was never released of record, and a copy of which is set forth on pages 156 to 173 of said record; the validity of this mortgage is not admitted by defendants.

That at the time of the execution of said contract of 6th*th* of August, 1870, there were individ*idend* subscriptions made and taxes voted by townships in Delaware County to the Davenport & S't Paul R. R. Company in the aggregate to the amount of about one hundred thousand dollars; said subscriptions were made to the stock of said railroad company.

The total subscriptions made to the capital stock of the Davenport & S't Paul Railroad Co. up to the present time, except those made by the Davenport Railway Construction Company, amount to less than two millions of dollars.

That from its organization up to December, 1873, F. B. Doolittle was a director and treasurer of the Delaware Railroad Construction Company and during the same time and afterwards was the assist-
553 ant treasurer of the Davenport & S't Paul Railroad Company, and was at the time of the change in the Delaware R. R. Construc-

tion Co.'s contract as aforesaid a director in the D. & S't P. R. R. Company, but was not a director in 1870 & 1871.

And that the evidence of the said Doolittle, as contained in the said record, on pages 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, & 133, shall be considered as evidence in this case, and either party may read the same or any part thereof as evidence on the trial of this suit.

That the articles of incorporation of the Davenport & S't Paul R. R. Co., a copy of which is set forth on pages 133 to 136, inclusive, of said record, were recorded in the office of the recorder of Delaware County, Iowa, and in the office of the secretary of state, in August, 1868.

That all the amendments to said articles, copies of which are
554 contained on pages 137, 138, & 139 of said record, were recorded in the recorder's office of Scott County, Iowa, and with the secretary of state; that no amendment was recorded in Delaware County.

That the Delaware Railroad Construction Company was organized as a corporation under the laws of Iowa in June, 1870, and was to continue for five years from that date. *That the Delaware Railroad Construction Company was organized as a corporation under the laws of Iowa in June, 1870, and was to continue for five years from that date.*

That from its organization it was composed of the following stockholders, to wit: F. B. Doolittle, R. Eddy, R. Boon, A. E. Martin, C. F. Fleming, Benjamin Thorpe, & J. M. Brayton, each holding the same number of shares and the same interest as stockholders in said corporation. And that this equality of interest has continued until the present time.

555, 565 The officers of said company, from December, 1873, until the present time, have been C. F. Fleming, president; R. Eddy, treasurer; A. E. Martin, secretary, who were ex officio directors, & composed the board of directors of said company.

That on the 18th day of January, 1875, the Delaware County Railroad Company was incorporated, composed of the following persons, also members of the Delaware Railroad Construction Company: R. Eddy, R. Boon, A. E. Martin, C. F. Fleming, Benjamin Thorpe, and J. M. Brayton.

That Charles Harger, Henry Harger, & J. M. Holbrook, were not members of said Del. R. R. Construction Company, became also members of the Delaware County Railroad Company at its organization.

That it was not considered by the members and stockholders of the Delaware Railroad Construction Company that under its articles
566 of incorporation said company could operate a railroad.

That F. B. Doolittle was a member of the construction company not included in the Delaware County Railroad Company. That said Doolittle has been paid nothing for his interest in the construction company, except what he has received as a member of said company in common with the other members of the same, being his share of the consideration heretofore mentioned as given by the Delaware County Railroad Company to the said construction company for the purchase of said property.

That soon after the organization of the Delaware County Railroad Company Warren A. Brayton was admitted as a member, and took thirty shares of stock and paid $3,000 for the same, of which sum the Delaware County Railroad Company paid $2,979.60 to redeem a portion of the Davenport & S't Paul R. R. Company from a sale
567 under a judgment and mechanic's lien in favor of Westphal & Heinds paramount to that claimed by the Delaware R. R. Construction Company.

The original stockholders of the Delaware County Railroad Company

were as follows, to wit: R. Boon, 55 shares; J. M. Brayton, 55 shares; B. Thorpe, 55 shares; C. F. Fleming, 55 shares; R. Eddy, 55 shares; and there were also members of the Delaware R. R. Construction Company; and the following persons not members of that company: Warren A. Brayton, 30 shares; Charles Harger, now deceased, and his interest held by his administratrix, 1 share; Henry Harger, 1 share; J. M. Holbrook, 1 share. And the above-named persons hold the above-named shares in the Delaware County Railroad Company.

568 That with the exception of Warren A. Brayton, as aforesaid, all the other members of the Delaware Co. R. R. Company paid for their subscriptions to the stock of said company with their individual notes to the amount of their respective shares as above-named.

That J. M. Holbrook and Henry Harger have been, respectively, president & treasurer of the Delaware County Railroad Company, and Benjamin Thorpe and R. Boon directors of the same, from its organization to the present time, and that the president, secretary, & treasurer of said company were ex-officio directors of said company.

That Charles Harger was the original secretary, but having died in June, 1875, A. E. Martin was appointed in August, 1875, secretary of said Delaware County R. R. Company in the place of said Charles Harger, and still holds that position.

569 That J. M. Brayton, above named, a stockholder in both companies, wrote the articles of incorporation of both the Delaware R. R. Construction Company & the Delaware Co. R. R. Company, was the attorney for the construction company that brought the suit on which the sale was made, was present at the sale, was the attorney of the construction company from the beginning to the end of the case, and appeared in court as such attorney.

When the judgment was obtained against Thompson & Dennison, on 22 May, 1874, after the sale made on the 4th of May previous, was the attorney for said company, and was present when the motion was made for a new trial in said cause on the 26 day of January, 1875; was present when the motion was made to transfer the cause to the Federal court at May term, 1875, after that motion was overruled.

570 And it is further agreed by the said parties that the articles of incorporation of the several companies herein mentioned, may be shown in evidence by copies thereof duly certified by the proper recorder, the secretary of state. And that copies of any records of the district or circuit court, duly certified by the clerk thereof, may be introduced by either party, and either party may take testimony as to any matters in this cause up to the first day of May, 1876.

The parties reserve the right to object to the evidence of F. B. Doolittle or any other party, or to any facts agreed upon, on the ground of incompetency or irrelevancy.

Dated Feb. 3, 1876.

(S'g'd) GRANT & SMITH,
For Meyer & Denison.

(S'g'd) J. M. BRAYTON,
For Delaware R. R. Construction Co. & Del. Co. R. R. Co.

(Endorsed:) In U. S. cir. ct., dist. of Iowa, Moses DeWitt Loomis vs. D. & S't P. R'd Co. Stipulation. Filed Mar. 25, 1876. E. R. Mason, clerk.

(Indorsement on cover:) No. 210. The Delaware Railroad Construction Company, appellants, vs. Lewis H. Meyer & William Dennison, trustees. Stipulation of counsel & addition to record. Filed 3rd October, 1877.